DRN-4126511

The complaint

Mr A complains that Scottish Widows Limited (Scottish Widows) significantly delayed the transfer of his personal pension to a new self-invested personal pension (SIPP). As a result he says he lost the opportunity to purchase a holiday home abroad. He says he's unhappy with Scottish Widows' offer of redress as it doesn't compensate him for the stress and upset he's suffered, as well as the potential significant financial loss from losing the opportunity to purchase the property.

What happened

In April 2022 Scottish Widows sent Mr A a retirement options pack for his pension plan. By June 2022 Mr A had decided to transfer the plan to a SIPP with a new provider. He says part of the reason was to take his tax free cash (TFC) lump sum and put it towards the purchase of a property abroad. On 28 June 2022 Mr A received notification that his transfer had completed but he says the funds didn't appear in his SIPP. Mr A says he began the process of contacting Scottish Widows to enquire about his funds, but despite trying numerous means of communication he didn't get a response until early September 2022.

Scottish Widows told Mr A that due to an administrative error the funds had been raised but not sent to the SIPP. It said it would send the funds immediately and look at the financial loss Mr A had suffered. In September 2022 Scottish Widows sent Mr A £850 for the distress and inconvenience the matter had caused and said it was going to contact the SIPP provider for a unit price comparison to establish what the impact of the delay was. It said it would also pay interest for the additional length of time Mr A should have had his TFC payment.

Further correspondence between Mr A and Scottish Widows continued and during this time Scottish Widows did confirm that Mr A had received more units by being invested when he was than he would have received had the transfer completed on 1 July 2022. So it said it couldn't make an additional payment to his SIPP as there was no financial loss. But ultimately Mr A didn't accept that position or the offer that was made to him. He said no allowance had been made for the position he would be in now had he been able to purchase the property abroad when he intended to.

Mr A brought his complaint to us where one of our investigators looked into the matter. He didn't think the complaint should be upheld making the following points in support of his assessment:

- The redress and compensation for the delayed payment of TFC was fair and reasonable.
- He could see that Mr A had received more units of his new fund within the SIPP as a result of the delayed transfer. He thought this meant Mr A wasn't due redress for this matter as he hadn't suffered a financial loss.
- The £850 Scottish Widows paid for the overall distress and inconvenience was in line with what we would recommend.
- Without further evidence to show the impact the delayed TFC payment had on the property purchase, it wasn't fair to say Scottish Widows should cover any potential losses Mr A said he'd suffered based on his calculations alone.

Mr A didn't agree. He made the following points in response:

- He didn't think compensation of £850 was sufficient.
- He believed the loss he will suffer when he does purchase his holiday home will be significant and didn't agree that was "unworthy of recompense" at this time.
- He had previously made it clear that there wasn't an agreed house purchase, and he hadn't instructed a lawyer – but that didn't alter the fact that his purchase will have been delayed and that he will suffer a financial loss. He had provided a fair and reasonable assessment of the financial loss but would accept it being assessed properly when the property is purchased if that meant he would be compensated.
- In his opinion the delay by his new provider in investing his funds was irrelevant, and any investment loss should be calculated as at the date the money was eventually transferred from Scottish Widows.

The investigator said that, in order to uphold the part of Mr A's complaint regarding the overseas property purchase, he would need evidence to show any losses were as a direct result of Scottish Widows' error. In this case there wasn't any such evidence. He also tried to explain why the delay in the new provider investing Mr A's funds was relevant because it meant he was able to buy more units of the new investment and therefore hadn't suffered a loss when compared to the number of units that could have been purchased on 1 July 2022.

But Mr A still didn't agree and asked for his complaint to be referred to an ombudsman. So it was passed to me to review.

My provisional decision

In my provisional decision I said Mr A's complaint should be upheld as Scottish Widows had made an error when it had Mr A's pension funds ready to transfer to his SIPP but didn't actually complete the transaction. I said that in order to put it right Scottish Widows needed to carry out a loss assessment calculation – which might not show a financial loss - but would provide more clarity and ultimately closure for Mr A. I made the following summarised points in support of my findings, although this decision should be read in conjunction with the full text – and findings - of that provisional decision, which form part of this final decision:

- Scottish Widows redress and compensation for the loss of TFC was fair and reasonable in my view.
- There were some factors which I wasn't entirely satisfied had been taken into account through Scottish Widow's method of calculating any financial loss by comparing unit prices on two separate dates. I thought it should carry out a simple comparison of funds comparing the date the money was transferred with the date it should have been transferred.
- But I didn't think there was enough evidence to support Mr A's claim that the delay in transferring his finds directly affected the purchase of a particular overseas property – or what his losses might have been.
- I thought Scottish Widows offer of £850 compensation for the distress and inconvenience caused was broadly within the range of what I'd expect to see for errors such as these.

Responses to my provisional decision

Neither party fully agreed with my provisional decision.

Mr A said I had doubted his intention to buy a holiday home and didn't accept his claim that Scottish Widows' actions had directly caused him a financial loss. He said he was actively looking for property at the time of the delay and had already appointed a lawyer. He confirmed he had now purchased a property and had now been able to calculate his financial loss.

Mr A provided an updated calculation to support his loss claim as well as various emails and documents which set out the trail of his ongoing search for a property. He provided the following information to support his claim.

- Emails from October 2021 to December 2021 asking to view various properties, as well as receipts for the accommodation he stayed in whilst he looked at various potential purchases.
- Proof of engaging a local solicitor in November 2021.
- Details of properties he was sent in June 2021 with his comments on them.
- Proof of reservation leading to the purchase of a property in January 2023.
- A revised calculation for the losses Mr A said he'd suffered which came to £13,879.

In response to the provisional decision Scottish Widows said that the calculation I had asked it to carry out wasn't "*standard practice"* as it generally requests unit price information form the other provider involved and then calculates if there has been a loss in the number of units purchased. It would then purchase the additional units if a loss has occurred. It said it would request the information I had asked it to get to carry out a new calculation but wanted to understand why this was necessary when the outcome was likely to be the same as the one it had previously completed.

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.

And having done so – and having fully considered Mr A's additional documentation regarding the ongoing process of trying purchase an overseas property - I see no reason to depart from my provisional findings. I know Mr A is going to be disappointed with this outcome – he continues to demonstrate the strength of feelings with lots of supplementary information. And I have some sympathy for the position he finds himself in having seen the transfer of his pension funds delayed by Scottish Widows.

But while I still think Scottish Widows should undertake another calculation I'm not persuaded that it directly caused Mr A a financial loss over the purchase of his overseas property. So, I'll explain my reasoning.

There's no dispute here that Scottish Widows didn't transfer Mr A's pension funds to his SIPP when it said it would. Scottish Widows' letter to Mr A dated 28 June 2022 said it had made "*payment of £233,075.10 in settlement of the current transfer value, …to (the) SIPP."*

But it hadn't made the payment – and subsequently accepted this was due to an administrative error. It eventually sent the funds on 20 September 2022. So Scottish Widows was left in the position whereby it said it would carry out a calculation to determine any investment loss that might have occurred and to look at what compensation it should consider paying Mr A for the undoubted stress and inconvenience the delay would have caused him.

At the same time Mr A explained that, during this period of delay, he was trying to purchase an overseas property and required the TFC from his pension plan in order to do so. He said the delay meant he couldn't buy a property and subsequently suffered a financial loss because the house prices had risen in the country he was going to buy in and also the exchange rate had moved against him. So he said he'd lost around £24,000 by that point.

So I've considered these three key areas of potential financial loss or request for compensation, particularly against the additional points both parties raised following my provisional decision.

The redress calculation

Scottish Widows said it had calculated the amount of interest – at 8% simple - that Mr A had lost on his TFC having received it on 26 September instead of when it said he could have expected to receive it on 7 July 2022. This amount was paid to Mr A along with compensation because the interest payment was also subsequently paid late. I think this was appropriate in the circumstances and Mr A hasn't made any further comment on this following the provisional decision – so I think the resolution is fair and reasonable.

But Mr A isn't happy with the calculation Scottish Widows carried out to see if he'd suffered an investment loss on his pension funds as a result of the delay. He didn't think it was fair that Scottish Widows had used the unit price on 19 October 2022 to reflect the delay because this included a delay in reinvesting by his new provider. He said the comparison should have been against the fund value when the money was received by the SIPP provider.

In order to bring some closure to this particular part of the complaint I set out a simpler method of calculating the potential investment loss. I accepted that it might provide the same outcome as the one Scottish Widows had already carried out. But I thought it would make it easier to show Mr A exactly what would have happened if the funds had been transferred on the 7 July 2002 instead of the date they were transferred. Scottish Widows thought this was unnecessary and not its "standard procedure". It said the extra work involved would only lead to the same outcome as it had already arrived at.

But Scottish Widows' original calculation wasn't carried out using the methodology I'd normally expect to see – which takes into account all of the subsequent actions that may have occurred within the plan after the transfer completed. So in this case I think that Scottish Widows' calculation may not have taken into account the TFC that was taken from the fund later than it should have been, or the slightly lower reinvestment of Mr A's funds that was undertaken by the SIPP provider. So I think Scottish Widows does need to undertake the following calculation.

Putting things right

Fair compensation

My aim is that Mr A should be put as closely as possible into the position he would probably now be in if his funds had been transferred when Scottish Widows said they had in its letter to Mr A.

What must Scottish Widows do?

To compensate Mr A fairly, Scottish Widows must:

Compare the current actual value of Mr A's SIPP investment with the notional value had it been transferred on the date that Scottish Widows said it ought to have been transferred. Allowance should also be made for the TFC to have been withdrawn and paid to Mr A on the date Scottish Widows has previously stated.

And to answer Mr A's question about Scottish Widows' use of the later dates when the new provider invested his funds, what I've set out above, in establishing the notional value of Mr A's recipient plan had the transfers occurred sooner would factor in the actual time it took for the new provider to invest the proceeds.

If the fair value is greater than the actual value there is a loss and compensation is payable.

Scottish Widows should pay into Mr A's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Scottish Widows is unable to pay the total amount into Mr A's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr A won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr A is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr A would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Additional interest should be paid at 8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance). Income tax may be payable on any interest paid. If Scottish Widows deducts income tax from the interest it should tell Mr A how much has been taken off. Scottish Widows should give Mr A a tax deduction certificate in respect of interest if Mr A asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

The impact of this matter on Mr A and Scottish Widows offer of compensation

I don't underestimate the impact this matter had on Mr A and the level of upset and concern this would have caused him.
The delay carried on for an extended period of around three to four months and Mr A has told us how his concern for the safety of the funds – and inability to be able to progress the holiday home purchase, caused him to have sleepless nights and panic attacks which has led to his mental health and work being affected. In addition, although Scottish Widows has corrected the losses caused by its delay, Mr A's expectations of being able to achieve what he hoped to would still have been raised during this time.

Mr A has continued to state that he regards Scottish Widows' offer of £850 for the distress and inconvenience caused by all the circumstances here, as *"miserly"* and insufficient for the impact this has had on him. But while I don't take lightly the impact this has all had on Mr A, our role isn't to punish businesses and our recommended levels of compensation try to recognise the impact of a business's errors. I think Scottish Widows' offer of £850 is proportionate and consistent with other awards this service might make in similar circumstances – so I think it's fair and reasonable in this case.

The loss of an opportunity to purchase a holiday home before prices rose significantly

Mr A has been consistent in claiming the most significant financial loss he suffered was as a result of not being able to purchase the holiday villa he says he was going to buy in 2022 - because of the delay in receiving his TFC. He has provided evidence to show that he did purchase a property with effect from January 2023 and has now undertaken a revised calculation setting out the *actual* loss he says he's incurred. He thinks the financial loss is around £13,879.

As I said in my provisional decision, I did consider this aspect of the claim carefully and I said I had no reason to dispute Mr A's assertion that he intended to purchase the property – as indeed he has now demonstrated. But, in my view, the evidence Mr A has now provided regarding the difference in house prices and exchange rates between July 2021 and the time of the purchase still isn't sufficient to support a claim of financial loss against Scottish Widows for not being able to buy the property in June 2021.

I say that because following Mr A's additional submissions I think there are reasons for concluding that in the summer of 2021, on balance, Mr A wasn't prevented from completing a property purchase nor was there a prospective purchase that wasn't allowed to progress directly because of the delay in receiving his pension funds.

I've seen evidence to support Mr A's claim that he engaged a solicitor and travelled abroad in late 2021 to view some properties that he was interested in. But the evidence from June and July 2022 only amounts to an email trail between Mr A and some agents enquiring about some properties in the area he was interested in. But Mr A fed back to the agent that he wasn't particularly interested in those properties and asked them to keep looking on his behalf.

And crucially there's no evidence to suggest that he was going to book any flights or that he wanted to view any of those properties. So there's not much to support the idea that he was close to finding an appropriate property or that a purchase was imminent, so I simply don't think there's sufficient evidence to show that Scottish Widows' actions directly led to Mr A losing a property or that he was prevented from buying one at that time.

I know Mr A thinks that now he has been able to quantify his loss I should uphold his complaint and tell Scottish Widows to compensate him along the lines of his calculation. But I don't think there's enough evidence to support his claim of losing a property purchase directly because of Scottish Widows actions in and around June to September 2022.

My final decision

I uphold the complaint. My decision is that Scottish Widows Limited should pay the amount calculated as set out above.

Scottish Widows Limited should provide details of its calculation to Mr A in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 22 June 2023.

Keith Lawrence

Ombudsman