

## **The complaint**

Mrs B complains Scottish Widows Limited (SW) didn't allow her to take her Tax-Free Cash Lump sum (TFCLS) from the non-guaranteed annuity rate(non-GAR) element of her pension plan. SW said any TFCLS had to be taken proportionately across both the GAR and Non-GAR elements of her pension. As a result, she didn't take her TFCLS and feels she has lost out financially.

## **What happened**

Mrs B has reached her nominal retirement age on a with-profits policy she held with SW. She enquired about her pension benefits and was told the larger part of her pension benefits had a GAR element and a smaller part has no GAR attached to it. Mrs B wanted to take her full entitlement of 25% TFCLS by taking the whole non-GAR element and small proportion of the part of her pension that had a GAR attached to it. The remaining funds would be used to purchase an annuity with a guaranteed annuity rate applicable.

Initially SW told her she could take this course of action but subsequently informed her that it wasn't possible for her to take her TFCLS in this manner and the full entitlement would need to be taken proportionately across both elements of her pension. It apologised for the misinformation it had provided and extended to deadline to allow Mrs B to make an informed decision.

Mrs B wanted to ensure she secured the element of her pension with a GAR attached and so chose not to take a TFCLS at all rather than it be spread proportionately over the two elements of her pension.

Disappointed, she complained to SW.

In its first final response issued on 12 December 2022, SW acknowledged it had given her misinformation but explained the policy was to split the TFCLS proportionality across both elements of her pension. It said it would provide the policy wording in an email to her. Mrs B remained dissatisfied and pointed to HMRC regulations which she felt demonstrated it was possible to take her TFCLS from the non-GAR arrangement.

SW issued a second final response on 26 January 2023, it said it had looked carefully at Mrs B's concerns. It said the decision was a business decision due to system capability and unfortunately couldn't be changed.

Dissatisfied Mrs B brought her complaint to his service.

An investigator looked into matters for Mrs B, she upheld her complaint for the poor customer service she had received and asked SW to pay her £100 by way of compensation but she said she couldn't ask SW to change a policy decision on how it calculated the 25% TFCLS across the whole of the policy as this was a standard industry practice and she didn't agree it had acted unfairly in doing so.

SW accepted the investigators findings and agreed to pay Mrs B £100.

Mrs B didn't agree. She felt other arrangements have been able to take the TFCLS from the non-GAR element of policies and she pointed to her pension provision that only stipulated the proportionality applied where the policy was made up of different investments such as with-profits and unit linked elements. She asked for an ombudsman review.

### **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.

Having done so I have independently reached the same outcome as our investigator. I appreciate this will come as a disappointment to Mrs B, I'll explain why. 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 Mrs B and by SW.

I have summarised this complaint in far less detail than Mrs B has done and, I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the key issue here – and that's Mrs B's frustration at the failure of SW to provide her TFCLS in the proportion she has asked to take it.

Mrs B has referred to a number of other policies where it may or may not be possible to take a TFCLS in a different proportion where there is a GAR and non-GAR element to the plan. So, I think it's important to clarify that I can only look at the conditions of her policy which is with-profits plan and look to see if SW has acted fairly and reasonably in its actions.

Deciding how and when to take benefits from a pension plan is a complicated business. Each individual will need to look at their own circumstances to determine the best way to do so. This is why providers signpost consumers to independent advice if they are in anyway uncertain about how to proceed.

I appreciate that when Mrs B spoke to a representative at SW in June 2022, she was given incorrect information about how she could take her tax-free lump sum. I'm satisfied that SW recognised that and corrected the information giving Mrs B further time to make her decision on her pension benefits.

It would have been helpful to gain independent advice at this time or approach Pension Wise for some guidance on her options. I understand Mrs B didn't feel she had the time to do so but in my view she had around 5-6 months to take to seek advice which I think is sufficient time and could have been of great assistance to her.

It's probably useful to point out here is a difference between the policy itself and the elements within it. Mrs B holds a with-profit policy which has two elements within it. A GAR for a given amount and the remaining value of the fund does not attract a GAR (the non-GAR element). So, whilst I can understand, especially with the given amounts, why Mrs B wanted to take all the non-GAR element as her tax-free cash, this was not an option available to her.

I have looked at the terms and conditions of the policy and whilst I appreciate the points Mrs B raises regarding other policies, including those with a unit linked feature (which doesn't apply to her policy) I wasn't able to point out a provision which would allow Mrs B to request her TFCLS could be taken proportionately in the way she wanted.

As our investigator mentioned it is a standard industry practice to calculate the 25% TFCLS across the whole policy. SW has said it is a business decision to calculate the amount across the whole policy and I'm afraid I cannot direct it to do otherwise.

Once SW corrected the information it had given and gave Mrs B the options about the TFCLS, it apologised and gave Mrs B further time to make her decision. There was always the option to take a TFCLS but ultimately, Mrs B made the decision not to take it. So, I can't say that SW prevented Mrs B from making an informed decision or that it acted unfairly in applying a business decision that is in line with industry practice.

I agree with the investigator regarding an award for the distress and inconvenience of receiving incorrect information on two occasions. Although this was corrected it led Mrs B to believe she would be able to take her TFCLS proportionately and I can understand her disappointment when she discovered this was not the case.

Because SW corrected its errors and provided the correct information as well as additional time for Mrs B to reach her decision I find £100 to be fair and reasonable.

### **My final decision**

For the reasons I have given I uphold this complaint and direct Scottish Widows Limited to pay Mrs B £100 for the distress and inconvenience this matter has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 28 August 2023.

Wendy Steele  
**Ombudsman**