

## **The complaint**

Mr J complains that Scottish Widows Limited (SWL) provided him with incorrect information about how the guaranteed annuity rate (GAR) on his pension would be paid. In addition, he also explained that they misinformed him about how the tax-free cash could be extracted from his plan.

Mr J says the misinformation resulted in him receiving a lower income than he initially thought. He went on to explain that he wants SWL to recompense him for the impact he says it's had on his finances.

## **What happened**

In August 2022, Mr J contacted SWL to discuss the options on his pension after receiving a wake-up pack from them earlier in the month. The pack highlighted his GAR would be lost if he didn't take his benefits by 14 October 2022.

Mr J's plan contained both unit linked and with profits investments but importantly, the GAR only applied to the with profits component. During the call, the SWL representative explained that Mr J would be able to take the majority of his tax-free cash from his unit linked fund first with the remaining balance being taken from the with-profits element. That would help ensure more of his with profits funds remained in the plan and benefited from the GAR.

During the discussion, SWL also provided Mr J with a number of annuity quotations that showed what his pension may provide if he took the income in different formats. They also explained that the final income he received would depend on the value of his plan at the time the annuity was purchased, so the figures quoted weren't yet guaranteed. Following the discussions, SWL sent four annuity quotations to Mr J. After considering the illustrations, Mr J selected the option of an income paid monthly in arrears, on a level basis without guarantees and submitted the paperwork ahead of the deadline. He also decided to take the maximum tax-free cash from the pension.

After Mr J had received his policy schedule, he contacted SWL because he was surprised to see the income he would receive was lower than he initially thought. SWL explained how the GAR and tax-free cash had been applied but pointed out that the option he'd selected hadn't resulted in the highest income available. They went on to explain that if he'd wanted the largest income available, he should've opted for an annual income paid in arrears.

Shortly afterwards, Mr J decided to formally complain to SWL. In summary, he said the latest information that SWL had provided was different to what was given in their initial discussions back in August.

After reviewing Mr J's complaint, SWL concluded that they'd not been as clear as they could have been in their communications with him. They provided an explanation about how the tax-free cash had been debited from his plan – that was, across both unit linked and with profits elements in equal measures rather than weighted towards the unit linked fund. They

also said, in summary, that they should have told him that to maximize the GAR, the annuity would've needed to have been paid annually, in-arrears, rather than monthly.

To say sorry, SWL offered Mr J £200 for the trouble they'd caused him. In addition, they explained that they'd be happy to reverse the transaction to put things right for him. However, as he'd already spent the tax-free cash at this point, Mr J said that wasn't a suitable option for him. In addition, SWL said that they'd be happy to switch the income to annually, paid in-arrears, but Mr J would need to return the income that he'd already received. Mr J explained that that also wasn't an option because he'd already used the income that SWL had paid him to date.

Mr J was unhappy with SWL's response so he referred his complaint to this service. In summary, he said that he felt he'd been misinformed by SWL. He went on to say that he didn't believe SWL's literature ever stated that he'd need to take his income annually to get the best income possible. In addition, he felt it was clear from their paperwork that he could take the tax-free cash from the unit linked funds to preserve the GAR and with profits fund so that would ultimately provide a higher income.

The complaint was then considered by one of our Investigators. She concluded that whilst SWL hadn't provided the correct information to Mr J at the time of their interactions, she was satisfied that following his complaint to them, the solutions they'd put forward to remedy things for him were fair and reasonable. She also said that despite being given the incorrect information, it wasn't reasonable to force SWL to provide an option to him that would never have been available in the first place to put things right.

However, Mr J disagreed with our Investigator's findings. In summary, he said that had he been given the correct information at the time, he wouldn't have taken the tax-free cash so he could've received the maximum income possible from his annuity.

Our Investigator was not persuaded to change her view as she didn't believe that Mr J had presented any new arguments that she'd not already considered or responded to. Unhappy with that outcome, Mr J then asked the Investigator to pass the case to an Ombudsman to review his complaint.

After carefully considering both sets of submissions, I issued a provisional decision explaining that I wasn't planning on asking SWL to take any further action beyond what they'd already taken. Whilst my reasoning didn't differ significantly from that of the Investigator's initial view, I added further context around why I felt SWL hadn't done anything wrong. For completeness, I repeat my provisional decision below:

My provisional decision:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I have summarised this complaint in far less detail than Mr J 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.*

*Having very carefully considered both sets of submissions, I'm broadly in agreement with the view set out by our Investigator and for the same reasons. Whilst I'm upholding Mr J's*

*complaint (on the basis he was originally provided with incorrect information), I'm not going to ask SWL to do anything different beyond what they've already done. I do appreciate that's likely to come as a disappointment to Mr J, but I'll explain why below.*

*Mr J has said that he feels misled by SWL, particularly around the information he received about the guaranteed annuity rate that he'd get when he took his pension income. SWL have apologised and tried to set the record straight. However, Mr J has pointed to recent literature that he believes suggests SWL aren't correct, and he can take his income as monthly and still receive the original rate quoted.*

*Given the concerns Mr J has set out, I've looked at what the terms and conditions of his plan say. Those conditions explain in detail what Mr J would be entitled to when he came to extract the benefits from his policy. Having looked at that document, whilst SWL did misinform Mr J in their August 2022 discussion, I'm satisfied that what SWL have ultimately explained to Mr J in their complaint resolution letter corrects that and is reflective of what Mr J is entitled to.*

*As I've already highlighted, Mr J holds a pension that includes both with profit and unit linked funds. The guaranteed annuity rate was only payable on the with profits element of his investment. So, whilst I can understand, especially given most of Mr J's monies were in the with profits fund, why he wanted to take all the non-GAR element as his tax-free cash, this was never an option available to him, despite what the SWL representative told him in August 2022.*

*According to the 1988 terms that were in place at the time Mr J took his plan out, it states:*

- 6.5(b) to receive in lieu of part of the member's pension under provision 6.4 or under option (a) above, as appropriate, a cash payment at the date of entry on pension provided that such cash payment does not exceed the maximum amount allowed under the rules. If the total amount includes values in respect of both unit-linked and with profits benefits, the balance remaining will be deemed to be split between those types of benefit in the same proportion as the total for the purposes of provision 4.4.*

*In addition, the brochure entitled 'Your guide to guaranteed annuity rates under your personal pension plus plan' (published July 2011), section 9 states: What if I want the tax-free lump sum? – The tax-free lump sum will reduce any portion of your plan entitled to a guaranteed annuity rate in the same proportion as the remainder of your plan. It also states the lump sum will not include any allowance for the GAR you are giving up.*

*So, whilst I've paraphrased from the terms document, in summary that confirms any tax-free cash has to be deducted from across the plan (both unit linked and with profits funds) in equal proportion. Therefore, the tax-free cash calculation in SWL's letter of 1 February 2023 appears to fairly reflect that approach.*

*In respect of the GAR on Mr J's pension, he understood from his discussions with SWL in August 2022, that he'd receive an annuity that provided a rate of 11% from them at retirement. However, according to the terms of his plan, it explains that to benefit from the quoted GAR, the policy holder would have to take benefits on an annual, in-arrears basis, otherwise it would be actuarially reduced if he took it in any other format. It states in summary:*

- 6.4 At the date of entry on pension the total of the value of any units allocated to the policy in respect of unit-linked benefit and any cash sum available in respect of with profits benefit will be applied to secure a pension payable yearly in arrear during the subsequent lifetime of the member, without final proportion to the date of death.*

- 6.5(c) to receive in lieu of the pension or pensions under 6.4 or under option (a) or option (b) above, as appropriate an actuarily equivalent (as certified by the Society) reduced pension or pensions (i) payable half-yearly, quarterly or monthly in arrear without final proportion to the date of death....

So, whilst Mr J was originally misinformed about how both elements of his pension would be paid, I'm satisfied that what he's now been told is correct.

SWL have offered to unwind the annuity to put Mr J back in the position he would've been in had the mistakes not occurred. However, Mr J says that's not possible because he's used both the tax-free cash monies and he's also utilised the monthly income payments he's received.

Mr J says the annuity he's received provides £335 per year less than he originally thought. He wants SWL to compensate him for the incorrect information that they gave him that led him to make the wrong choice. He told our Investigator that he wants the lesser amount of the GAR being applied to the with-profits part only. However, I don't agree that they should do this and that's because he was never entitled to receive that level of annuity on a monthly basis. So, it would be unfair on SWL if I were to instruct them to give Mr J something to which he was never able to have in the first place. Whilst I've looked closely at the paperwork that Mr J has submitted which he says proves SWL have misled him, I've not been persuaded that that's the case. That's because the terms of the policy take precedence.

I think it's important to remember that SWL didn't provide any advice during their interactions with Mr J. And, whilst I accept, some of the initial information they provided to him wasn't accurate, had he wanted personalised advice specific to his circumstances, he would've needed to seek professional financial advice. Had he done so, I well suspect the adviser would've highlighted the necessity of taking an income on an annual basis would most likely yield the largest income. That's because the provider is able to hold on to those monies for a year before they have to pay those funds out. I appreciate that Mr J says he visited Pension Wise to seek information about his options. However, that service is able to provide information only rather than tailored advice specific to Mr J's own circumstances.

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 any way uncertain about how to proceed and SWL did just that.

I've carefully considered the impact that this mistake has had on Mr J. I appreciate that when Mr J spoke to a representative at SWL in August 2022, he was given incorrect information about how his tax-free lump sum would be debited from his pension along with the incorrect fact he'd receive an 11% income on a monthly basis. But, I'm satisfied that SWL recognised that misinformation, set the record straight and offered to reverse the transaction to how Mr J wished. I've thought about whether on the balance of probabilities, having the correct information in August 2022 would've made a difference to the outcome – and I'm not persuaded it would have.

Whilst I can't say for certain what would've happened, I still think that Mr J would've taken the tax-free cash. Mr J has already explained that his circumstances at the time – the pressing need to help his family out financially – necessitated it. In addition, I think had SWL told Mr J the difference between a yearly and monthly income, it's more likely than not that he would've selected a monthly income. That's because industry experience shows most consumers don't want to wait a year before receiving their income and taking the monies monthly aides with budgeting. But, more specifically from what I've seen, I think Mr J's

*finances at the time appear to point towards him needing the funds to support his monthly expenditure. That's reflected in the fact that when SWL offered to unwind the plan and restart the annuity on an annual basis, they'd need Mr J to return the paid contributions to them. By that point, he wasn't able to do so.*

*So, I can't say that SWL prevented Mr J from making a newly informed decision or that they acted unfairly.*

*Using financial services won't always be hassle free. Mistakes sometimes happen but when they do, it's important that businesses put things right for consumers. Whilst Mr J is unable to accept the solutions that SWL have put forward because of his current financial circumstances, that doesn't mean SWL have to take another course of action. As I've already explained, I'm satisfied that what SWL offered Mr J is fair in the circumstances, even if he is unable to make use of those choices. I also think that the £200 that SWL have already paid to Mr J to say sorry is reasonable. It's also in line with what I would have asked them to pay to Mr J had they not already done so. Therefore, I won't be instructing SWL to take any further action beyond what they've already offered Mr J.*

#### Responses to my provision decision

After considering my provisional decision, SWL stated that they had nothing further to add.

Mr J responded, saying in summary, that all of the verbal information and written documentation he received stated that no matter how he took the pension, it wouldn't affect the GAR and the tax-free cash could be taken solely from the unit linked part of his plan. He wanted to understand how this service could draw the conclusion it had when he was told something different and, in his opinion, so had the paperwork that SWL had provided him with.

#### **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.

Whilst I appreciate that this may come as a disappointment to Mr J, having carefully considered his subsequent comments, I'm not persuaded to alter my original thinking. In his response to the provisional decision, Mr J highlighted a document that he felt suggested no matter how he took the pension, it wouldn't affect the GAR and the tax-free cash. Mr J referred to that piece of paperwork as 'document 5' - a single page photocopied out of a larger document. The relevant part of the document Mr J refers to states: *"if you take a cash lump sum instead of part or all of your pension then the cash taken will not include any allowance for the guaranteed annuity rate. Normally, up to 25% of your pension fund can be taken as a tax-free lump sum. From 6th April 2015 the remainder can also be taken as a lump sum, though this will be subject to tax"*. However, I believe that SWL are stating that there will be no additional gain from the GAR in relation to any tax-free cash taken.

That same document also states: *"you won't get your guaranteed annuity rate if you don't take it in the form that's specified in your policy provisions"*. And, as I've already highlighted in my provisional decision, the provisions of Mr J's plan explain that to benefit from the stated GAR, he must take the income annually and in arrears. It also states that when taking the tax-free cash, the funds will be taken proportionately from across both unit linked and with-profit funds. So, it seems to me that SWL's documentation in respect of this point does set out what Mr J is entitled to.

Whilst I do sympathise with Mr J having initially been given incorrect information over the telephone in August 2022, this was subsequently corrected by SWL. And, just because they told him he could take all his tax-free cash from the unit linked element of his plan and he could take his income monthly without it affecting the GAR, it doesn't necessarily follow that I think they should honour that. That wouldn't be fair to other consumers with the same policy or SWL and in any event, Mr J was already provided with the terms of what his policy would provide when he took the plan out.

I'm satisfied that when SWL identified their error, they put in place reasonable steps to put things right with Mr J. And, as I've already said, even though Mr J is unable to accept the solutions that SWL have put forward because of his current financial circumstances, that doesn't mean SWL have to take another course of action. That's because I'm satisfied that what SWL offered Mr J is fair in the circumstances, even if he is unable to make use of those choices.

So in summary, I'm upholding Mr J's complaint (on the basis he was originally provided with incorrect information), but I'm not going to ask SWL to do anything different beyond what they've already done.

### **My final decision**

Scottish Widows Limited has already made an offer to pay £200 to settle the complaint and I think this offer is fair in all the circumstances. So, my decision is that Scottish Widows Limited should pay Mr J the £200 they offered in their final resolution letter of February 2023.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 September 2023.

Simon Fox  
**Ombudsman**