

The complaint

Mr C has complained that Scottish Widows Limited have not established his personal pension following his Pension Sharing Order in 2021 and has suffered financial detriment as a result.

What happened

On 8 September 2021 a Pension Sharing Order between Mr C and his ex-wife was granted showing 97% of a Scottish Widows pension in his ex-wife's name was awarded to him. In April of 2022 Mr C contacted Scottish Widows to enquire whether his pension would be set up, but a change of address had meant that previous correspondence had not been received by him.

Mr C told our service that he had selected Scottish Widows as the provider of his pension as his ex-wife's plan was with it – and he thought this would be the simplest way forward.

In June 2022 Scottish Widows sent Mr C a Personal Details and Options form to complete.

The Personal Details and Options form dated 9 June 2022 showed that Mr C had opted to transfer his share of the above pension to a Scottish Widows Stakeholder Pension Plan.

Scottish Widows confirmed that it had received Mr C's Options form in an email dated 17 June 2022 and confirmed the application form would be sent across.

In his email dated 25 June 2022 Mr C confirmed he had received the application form and asked if he needed to complete section C regarding a transfer or single payment.

Scottish Widows confirmed via email on 29 June 2022 that as this was a pension sharing credit section C could be left blank alongside its corresponding checklist tick box.

Mr C emailed Scottish Widows on 4 July 2022 attaching his completed application form. The Stakeholder Application form showed that Mr C had opted to invest 100% of his funds in the Scottish Widows Stock Market Growth Portfolio Fund without any lifestyle switching.

When he had not received a response, Mr C emailed Scottish Widows on 15 July 2022 sending the application again. Scottish Widows replied on 27 July 2022 to confirm they had received the application, that the new policy was partially set up and they were awaiting the claims team to process the transfer.

Mr C chased the progress of his pension a number of times as he had received no reply. Mr C raised a complaint to Scottish Widows. Having not received a reply he referred his complaint to our service in November 2022. Scottish Widows sent Mr C a letter dated 5 January 2023 asking for more time to consider his complaint. A similar letter was sent by Scottish Widows to Mr C on 1 February 2023.

Scottish Widows confirmed to our service on 15 February 2023 that they could not commit to any timescale to send their business file or respond to Mr C's complaint. Our service re-requested this on 10 May 2023 with a similar holding response provided by Scottish Widows.

A final business file request was made by our service on 2 June 2023 requesting the information be sent no later than 7 June 2023.

This information was not forthcoming and so our investigator issued a recommendation based on the information we had. The investigator upheld the complaint. He explained Scottish Widows had provided no information or reasoning to Mr C about why it had yet to set up his pension for him. And this had gone on for far too long. And that Mr C had been chasing Scottish Widows but with very little helpful information given in return which would've been very frustrating.

The investigator said Scottish Widows had all the information they required on 5 July 2022 to setup the pension and it should've finalised this by latest 19 July 2022. It had caused unacceptable delays since then. He upheld the complaint saying Scottish Widows should set up the pension and work out what the fund would be worth it had been invested on that date. He also awarded £400 to Mr C in relation to the trouble and upset caused by Scottish Widows inaction and lack of information.

Scottish Widows responded to say they agreed with the view.

Mr C said that he agreed with the view but no longer wanted the pension set up with Scottish Widows as he had lost all trust in them. He wished to have it transferred but he would settle for the aforementioned solution if his complaint could be kept open until he had been able to complete a transfer after the pension was setup with Scottish Widows.

Our investigator tried to mediate a solution but Scottish Widows continued to delay matters and accepted the case would need a decision as it couldn't give any timescales.

The case was then passed to me, an ombudsman at this service, to decide.

After I had reviewed the case, I asked the investigator to contact both parties on my behalf to explain the following:

'Mr C has made it clear, somewhat understandably in the circumstances, that he wishes for the policy to be set up elsewhere and not with Scottish Widows. However, our role is to put a customer back into the position they would've been had an error not occurred. And I think setting up the policy with Scottish Widows (at least initially) does this. Adding the transfer process into any redress, complicates matters and adds potential delays caused by other parties such as the receiving scheme into play.

I don't think this is necessary in the circumstances despite my sympathy with Mr C's position.

Mr C has also asked that we keep the complaint open, if he accepts the policy is set up with Scottish Widows, until any transfer out is completed. However, we cannot agree to this as we cannot keep complaints open indefinitely. And this would be a new complaint point in any event. If after the policy is setup Mr C is unhappy with the transfer process he can raise a new complaint.

So I intend to say that the value should be attributed to the policy Mr C initially wished to open. As a home for the fund is needed to move this situation forward, so that Mr C can then transfer. And I'll state in the decision Mr C if he wishes to then do so can transfer penalty free to another provider once the policy and value has been established.

In terms of the redress I intend to award £600 for the distress and inconvenience caused which is an increase on the recommendation made by the investigator of £400. The length of

time this has been ongoing with very little reassurance or reasoning for the delays given to Mr C, will have caused him considerable distress. And he has gone to some inconvenience to try and establish what is happening with the pension with little input from Scottish Widows. And with the matter having come about from the proceedings of a divorce I think this will have made what would be a very frustrating and stressful situation in any event, worse.

I don't think the £400 award adequately reflects the distress and inconvenience caused to Mr C.

I also intend to award 8% simple interest to Mr C on any loss established at the calculation date. But only in the event Scottish Widows takes longer than 14 days to establish the pension once it receives notification of Mr C's acceptance of my decision. The length of time this has taken, as Scottish Widows appears to accept, is unreasonable. And so this needs to be recognised going forward so Mr C is compensated for any further delays.'

I also set out the revised redress methodology.

Mr C said in reply:

'My obvious concern here, which I've previously referred to, is that (given that they currently haven't complied with a court order to transfer the fund) there appears to be nothing to stop Scottish Widows from setting up an account and then subsequently continuing to ignore me/yourselves (as they have for the last year), leading to another 1.5-2 years of delays to try and get my money away from them - this surely must be taken in to account in the decision.

I understand the point about an open ended commitment (which I can understand yourselves not wanting to give) however in order to minimise any complaint procedure going forward (which I believe is highly likely to happen) I'm requesting, as an absolute minimum, a fixed term during which this complaint remains open.

This fixed term should be at least 1 month longer than the time Scottish Widows gives in their Ts and Cs for the completion of a transfer of a pension fund (ie if their documentation specifies that they should transfer the fund within one month of receipt of a request for transfer, the case should stay open for at least another two months after the setup of the fund) I don't think that this is an unreasonable compromise and would hopefully incentivise Scottish Widows to comply in a timely manner. it also means that, if they don't comply with the decision, this case can immediately be resumed without having to go through any re-qualifying period for consideration by yourselves.'

With regards to the award of 8% Mr C said:

'My current assumption is that this case will potentially take a significant time period to resolve and so would suggest that this interest is compounded by the current rate of RPI every month (or as a minimum, annually), rather than be calculated as simple interest (again to incentivise Scottish Widows to comply).'

He also said he currently doesn't pay income tax and so the decision shouldn't make reference to a deduction being made for tax.

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.

Scottish Widows has agreed it needs to put things right, so there is no dispute about the

merits of the complaint, nor is there dispute about the date the pension should've been set up on. So, it is not necessary to set out in any detail here the reasons for upholding the complaint. It is clear Scottish Widows has failed Mr C for unknown reasons with very sparse communication as to what is happening and why. Which I think makes the delays even more frustrating for Mr C. I've recognised this in my award for distress and inconvenience. I sent out some interim findings in an email to both parties referred to above, and the quoted contents above forms part of this decision – as I see no reason to depart from those points.

The only matter left in dispute is how to put things right as Mr C quite understandably has some concerns about what will happen next following my decision. As he's lost all trust in Scottish Widows.

Mr C has asked that we keep this complaint open following our final decision. However, this is not practical nor possible. Once a final decision is issued that is the final say we can have on a matter – we cannot make amendments to the decision after it has been issued. Mr C can contact us and keep us informed of any new points he wishes to raise. And we'll be able to consider then whether a new complaint needs to be set up – and whether in the circumstances it should be prioritised.

Mr C has told us he is now considering early retirement and whilst he hasn't specified that he is planning to take benefits from this plan early – it is possible he could choose to do so. But due to Scottish Widows inaction Mr C currently isn't able to take benefits from this pension if he did wish to do so. So, Scottish Widows would be well advised to sort this matter out for Mr C as soon as possible before even more negative effects arise due to their unreasonable delays.

Mr C has also asked that we incentivise Scottish Widows to act promptly. Issuing a final decision that it is obliged to comply with, does incentivise Scottish Widows to act and I've put measures into the decision that also should incentivise it to act swiftly. Retaining the status quo and not issuing the decision doesn't help Mr C. And we are obliged to resolve complaints and not leave them open ended.

Furthermore, Mr C's concerns (which I can completely understand) about the speed in which Scottish Widows will facilitate a transfer out are still hypothetical, it hasn't happened yet. We cannot keep cases open (which would also mean a decision couldn't be issued) for potential future issues that may or may not occur. And as I've said new issues that haven't previously been complained about would need to form a new complaint in any event. I'd hope that in the circumstances Scottish Widows would prioritise any potential transfer and look to avoid any further delay in its administration of Mr C's pension.

I also appreciate Mr C would much rather the policy is set up with another provider and wants this to form part of the decision. But as I've explained it adds extra steps to the process and will involve further administration and other parties. And potential issues with this might not all lie with Scottish Widows – which makes redressing the situation difficult. Mr C's complaint when he came to this service was about the time Scottish Widows was taking to establish his pension. The redress I've set out puts him back as close as possible into the position he would've been had the delays not occurred. I think it is a fair and reasonable solution in the circumstances. And I've said that Scottish Widows should then allow Mr C a transfer without penalty (although I've no reason to believe a penalty would apply in any event) if he still wishes to do so. This should be administered as if it was the option chosen at outset as a home for his pension.

With regards to including an RPI element to any interest award, our approach where customers have been delayed unreasonably from receiving their money is to award 8% simple interest. I've applied this in the decision, if a situation occurs where Scottish Widows

unreasonably delays the payment of redress (either into Mr C's pension or directly to him). 8% simple interest also reflects the likely award a Court would make in similar circumstances. The award of 8% included as part of this decision also incentivises Scottish Widows to act promptly as the longer it takes, the more it potentially pays out as compensation.

Mr C also raised the question as to whether it was fair to use the Scottish Widow's fund he is invested in as a basis for compensation given that he didn't intend to be invested in that fund for as long as he has. I understand his point, but we cannot say now with any certainty what fund(s) he would've invested in going forward – and or how long he would've stayed invested with Scottish Widows had it set up his pension promptly. The aim is to put him back in the position he would've be in as closely as possible. It won't always be possible to put a customer back in the exact same position.

In situations such as these I'd either use an index based on an estimate of the sort of risk profile Mr C would've thought to invest in or the actual fund. As Mr C selected the Stock Market Growth Portfolio Fund, I think this is a good as an indicator as any, of what he likely would've invested in. And in any event if the funds still presumably held in the original plan have outperformed this fund, Mr C will receive that value instead. However, I have made a small amendment to the date of calculation in the redress in consideration of the fact that Mr C doesn't intend to stay invested with Scottish Widows any longer. I've set the calculation date as the date of my decision instead of at the point that Scottish Widows establish Mr C's pension.

Mr C has also said he doesn't currently pay income tax so the reference to a deduction for this in the decision should be taken out. But if as expected Scottish Widow's transfers the money into a pension for Mr C, there will be no tax deduction due then. Mr C will then only pay tax when he takes his benefits and only if it is due. The same process any other pension holder would go through.

As a failsafe where issues arise and funds cannot be added to a pension, we include the option for a provider to pay the funds directly to a customer. But to be fair to both parties and to put the customer back in the position they most likely would've been in, we need to take account of any tax a customer is likely to have paid had the funds been taken from a pension as income. The inclusion of a notional tax deduction in the award is to reflect a customer's circumstance as if they were receiving the funds from the pension in retirement. In most circumstances, even if this is their sole pension and they have retired from work – their income in retirement will include the state pension. This alongside the payments from the personal pension will mean that a deduction for tax will apply to their personal pension income. And therefore, we say that firms *can* apply a notional tax deduction if they wish. Furthermore, it is unusual for someone in retirement to be able to meet their expenditure with income below the lower tax threshold unless significant savings are held.

This is an assumption on the likely treatment of tax at this point, when Mr C comes to retire, his circumstances could change and of course taxation rules could also change. But these are variables we cannot account for now. We've explained this to Mr C and asked him to let us know if for example, he won't receive a state pension. But after the explanation he's said he doesn't have anything further to add. And this will only have a bearing in the event that Scottish Widows pays the pension value directly to him rather than setting up his pension which is the primary direction in this decision.

conclusion

In summary, I am upholding Mr C's complaint in full and upon Mr C's acceptance of my decision, Scottish Widows needs to do the following to put things right.

Putting things right

To compensate Mr C fairly Scottish Widows should:

- Calculate any loss Mr C has suffered by obtaining the notional value of the pension from Scottish Widows on the basis that it had been in the Scottish Widows Stock Market Growth Portfolio Fund as of 19 July 2022 until the date of this decision. And by subtracting the actual value of the funds at the date of this decision.
- If at this date the actual value is higher than the notional value had it been invested earlier, Mr C will have made a gain due to Scottish Widows' delay and there would be no loss. However, Scottish Widows, will still need to pay the distress and inconvenience award to Mr C.
- The compensation amount should, if possible be paid into Mr C's Stakeholder Pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum.
- Redress paid to Mr C as a cash lump sum includes compensation in respect of benefits that would otherwise have usually provided a taxable income.
- Scottish Widows may make a notional deduction to cash lump sum payments to take account of tax that Mr C would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.
- Scottish Widows Ltd should also pay Mr C £600 for distress and inconvenience.
- If more than 14 days pass after notification of Mr C's acceptance of the decision and the pension still hasn't been set up - Scottish Widows needs to add 8% simple interest to any loss established, and the amount awarded above for distress and inconvenience. Once the loss is established the interest award should apply from the date of my decision until the date that Scottish Widows establishes Mr C's pension. Any interest award should be paid directly to Mr C.

My final decision

I uphold Mr C's complaint against Scottish Widows Limited and upon Mr C's acceptance of my decision it should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 2 January 2024.

Simon Hollingshead
Ombudsman