DRN-4406850

The complaint

Mr L complains that the stakeholder pension plan he held with Scottish Widows Limited (Scottish Widows) fell by around 40% from December 2021 to when he took his tax free cash (TFC) and switched to a drawdown plan in October 2022. He says this significant fall in value isn't consistent with being invested in a "balanced" investment strategy. He also complains that Scottish Widows mishandled his request to take his 25% TFC in September 2022 and that this delay of around one month meant that his fund fell by a further 17%. He would like these losses to be refunded as well as recognition for the severe stress the matter placed on him.

What happened

In 2008 a financial adviser applied for Mr L to join his employers' group stakeholder pension scheme administered by Scottish Widows. The recommended investment strategy was a "lifestyle" portfolio - which was invested across a balanced pension portfolio and would gradually be switched to a pension protector fund and cash as he approached retirement. In 2010 the same adviser transferred two of Mr L's personal pensions into the stakeholder plan in line with the existing investment strategy.

In September 2022 Mr L contacted Scottish Widows with a view to drawing his TFC from the plan. At that time the plan was valued at £64,182.32. Mr L also asked Scottish Widows to provide an explanation for the approximate 25% drop in the value of his fund within the last year.

Scottish Widows emailed Mr L a link so that he could complete the first stage of the process to draw his benefits. He completed the request online but for a "partial encashment" of his plan. Scottish Widows provided Mr L with the required illustration asking him to telephone to complete the second stage of the process. It said the call was necessary as Mr L was within 12 months of his selected retirement age. At this time the plan was valued at £62,323.05.

Mr L contacted Scottish Widows on 11 October 2022 but at that point it was confirmed that he didn't want a partial encashment but just to withdraw his 25% TFC. This required Scottish Widows to provide a new retirement options form which was returned the same day. By this time the plan value had fallen to £56,976.67. The following day Scottish Widows provided Mr L with his illustration and the TFC was paid shortly afterwards. A letter dated 14 October 2022 confirmed an amount of £54,652.06 had been disinvested from the original personal pension policy – which had been cancelled.

But Mr L wasn't happy with the delay which he said led to him receiving less TFC, and he noted he still hadn't received an explanation for the sharp fall in the value of the plan during 2022. So he complained to Scottish Widows setting out his two complaint points as follows:

- He understood the meaning of the term volatility but wanted to know how this affected his "balanced approach" investment strategy as he believed the policy schedule defined this as "*moderate ups and downs …compared to other investment approaches."* He thought that a loss of around £23,873 (over 25% of the value of his fund) didn't align with a *moderate* investment strategy.

- He was confused why Scottish Widows didn't understand his simple request to access his TFC during the call of 21 September 2022. He said its failure to carry out this request led to a delay of around 20 days which meant he suffered even further falls in the value of his plan and to the value of the TFC he expected to receive.
- He'd also experienced further distress and inconvenience in trying to gain online access as his funds had been transferred to a new plan.

Scottish Widows didn't uphold the complaint. It said that the value of Mr L's pension funds had fluctuated over the term of his plan as a normal consequence of investing. But there had been a period of substantial volatility in recent times due to a number of factors which unfortunately had led to his plan falling in value at this time – so it didn't think it was responsible for the losses to his pension plan. It also said that it sent him the correct form to complete after their discussion on 21 September 2022 as part of its two stage encashment process. But unfortunately Mr L indicated that he wanted to partially encash his plan – so it sent out illustrations along those lines asking him to call back to complete the process.

Scottish Widows said Mr L then confirmed that he wanted to take his TFC and leave the residual fund in a flexi access drawdown plan and, as this was a different option to the one he had previously indicated, it had to send out a new form to complete the process. It thought it then paid the TFC within a timely manner and therefore wasn't responsible for any delays in Mr L receiving his benefits.

But Mr L wasn't happy with that response and so he brought his complaint to us where one of our investigators looked into the matter. He didn't think the complaint should be upheld as he thought Scottish Widows hadn't done anything wrong regarding the investment of Mr L's pension and it was simply the performance of the underlying lifestyle funds which had led to the fall in the plan's value. He also said that, as Scottish Widows had to go through a regulated process when processing Mr L's claim to his benefits – and had to restart that process when Mr L made an error when completing his retirement options form – he didn't think it had done anything wrong or mishandled Mr L's claim.

Mr L didn't agree with this outcome. He made the following points in response:

- When he called Scottish Widows on 21 September 2022, he asked for the payment of his 25% TFC in the quickest and easiest way possible. He didn't discuss any other options because he only required the TFC. When he chased up this request on 11 October 2022, he was told that he'd been given incorrect information and Scottish Widows could indeed pay his TFC straight away – which it did. He said he didn't make a request for a partial encashment at any point.
- He said he gave exactly the same instruction to another pension provider which was completed without any misunderstanding of his request or delay.
- He questioned what responsibilities Scottish Widows had for his funds' performance if, as the investigator suggested, it wasn't responsible for the "*sale, monitoring or advising of the funds".*
- He thought Scottish Widows should be more accountable for *"misrepresenting both its call handling facility and investment strategies"* for its customers.

But as no resolution could be found Mr L asked for his complaint to be referred to an ombudsman – so it's been passed to me to 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.

And having done so I agree with outcome reached by the investigator. I know Mr L will be disappointed with that outcome and I have some sympathy for the position he's in having suffered a significant fall in his pension funds as well as reduced level of accessible TFC. But I don't think that Scottish Widows was itself responsible for these falls nor do I think it was responsible for the delay in processing his TFC claim which saw further falls to the plan's value. So I'll explain my reasons below.

How the plan was invested and the "lifestyling" that applied to the plan

I asked Scottish Widows to explain how Mr L's pension plan was first arranged. From the information I've seen I understand that an application to join a group stakeholder plan – administered by Scottish Widows – was made by an adviser on Mr L's behalf in October 2008. I assume the advisory firm was engaged by the employer for that purpose. Regular contributions were made by Mr L and his employer to the plan.

In 2010 two separate personal pensions that Mr L held with other providers were then transferred to the group stakeholder plan by the same financial adviser – on the same investment basis as before. The value of the transferred plans amounted to around £32,730.

In 2012 Scottish Widows received a letter of authority from a different advisory firm requesting information about Mr L's plan. So this firm then had servicing rights over the plan.

This event timeline is important because it confirms that an adviser set up the plan and was responsible for the initial selected investment strategy and the ongoing suitability of the plan for Mr L's circumstances. It was responsible for the initial advice it gave - which included recommending funds that were appropriate for Mr L's agreed "moderate" attitude to risk (ATR), and for ensuring Mr L was made aware of the features and benefits of the plan as well as the risks involved.

So I can't reasonably consider any claim about whether the plan (and investment strategy) was suitable for Mr L – or continued to be so - against Scottish Widows. Its role here was simply to set up and administer Mr L's pension plan according to the instructions it was given by Mr L's adviser.

But when Mr L first contacted Scottish Widows in September 2022 to discuss drawing his TFC from the plan – and he became aware of its then value – his complaint was about the significant fall in the value of his plan (over 25%). He said the fall wasn't consistent with a "moderate" investment strategy which he said had been defined as "*moderate ups and downs …compared to other investment approaches."*

We wouldn't usually consider complaints solely about poor investment performance unless this could be considered along suitability issues – which I've established Scottish Widows couldn't be held responsible for in this case.
But we can look at whether Scottish Widows managed the funds appropriately and, in this case, applied the lifestyling strategy as it said it would.

Scottish Widows "*pension investment approaches*" booklet, which should have been made available to Mr L at the point of sale, set out its various investment approaches. Mr L's adviser recommended that he invest in line with a balanced risk profile, with a *"targeting annuity*" retirement outcome. This was suitable for someone wishing to take out an annuity at retirement.

This approach was explained in the booklet as being "*designed to balance the level of risk taken against the time to retirement. In the earlier years, more of your money is invested in higher-risk assets such as equities and property to increase the potential for growth. We then begin to gradually reduce your exposure to higher-risk assets once you are 15 years from your selected retirement date, moving more of your pension savings into safer assets such as bonds and cash. In the final five years leading up to the selected retirement date, your pension will gradually move into one of three carefully selected packages depending on how you plan to access your pension savings once you reach this date. These are tailored to suit either purchasing an annuity, taking a lump sum or taking flexible income."*

The "*balanced targeting annuity*" outcome invested Mr L across three different pension portfolios (in various proportions) until he approached retirement and would then be switched more towards a pension protector fund and cash. By the time Mr L contacted Scottish Widows in September 2022 he was principally invested in the protector fund (80% long dated Sterling denominated investment grade corporate bonds) with the remainder held in cash and a small element within a pension portfolio.

A lifestyle strategy is generally accepted as the default investment for a provider seeking to manage investment risks as a pension plan holder's retirement age approaches, by gradually moving investments out of equity type assets into cash and fixed interest assets. But while these investments, generally, exhibit lower volatility than equity assets over the long term, they don't eliminate risk and in certain situations fixed interest investments can fall in value sharply, as was unfortunately the case here.

I know Mr L doesn't accept that a moderate type of investment should fall so significantly in value, particularly according to its definition of "*moderate ups and downs".* But while that was the stated aim of a balanced investment it wasn't guaranteed, and as Scottish Widows set out in its pension investment approaches booklet – as well as other literature it provided, "*please note that, whichever fund or PIA you are investing in, the value of your investment can go down as well as up, and could fall below the amount(s) paid in. This also applies to 'cash' and 'near-cash' funds."*

So while I appreciate Mr L's understanding of what he expected and hoped would happen, there were no guarantees about the returns on his plan. The situation in 2022, with higher interest rates and inflation, caused the value of bond and gilts funds to fall sharply. This wasn't anything Scottish Widows had responsibility for and, as it had no authority to switch Mr L's funds or provide him with any advice, it wasn't able to do anything to mitigate the losses to his plan. It was for Mr L, or an appointed adviser, to make any fund switches or change of course to the investment strategy if he so wished.

I haven't seen any evidence that Scottish Widows mismanaged the fund although it's unfortunate how significantly Mr L's particular plan fell in value, and I can understand how upset and disappointed he would have been by that outcome. But I don't think Scottish Widows had done anything wrong in the way it managed the lifestyling profile and I haven't seen any evidence that it didn't follow the investment strategy set out for the profile.
The underlying funds themselves appear to have achieved similar returns to the appropriate benchmark indices, indicating that they didn't perform any worse than comparable funds.

Did Scottish Widows cause an avoidable delay to Mr L request for TFC?

The second part of Mr L's complaint is that, when he contacted Scottish Widows in September 2022 and was clear in his request to access his 25% TFC, it failed to comply with his request in a timely way, issued further paperwork for him to complete, and caused him to receive a lower amount of TFC because of the further falls in the value of his plan.

Mr L says that when he contacted Scottish Widows, he explained that he simply wanted to take his tax free lump sum. And I can understand why he may have believed this was sufficient to arrange the payment to him, especially as this was what did happen with a similar request he made to another provider . So I've listened carefully to that call.

Mr L is right to say that told Scottish Widows that he was "*basically interested in taking 25% of my pension.*" It was agreed with the adviser that was his TFC. After a brief discussion about the fall in the value of his plan the adviser said that he would "*send you an online form giving you all your options and important information to make your decision. You can tick the box to take the TFC or have a look through and see if there are any other options you may prefer.*" He sent Mr L a link to the form.

He explained that "*once you submit the form, I'll email you back within two working days regarding your next step. Most likely (sic) be a form with TFC or you might need to phone in we'll let you know.*"

So I think Scottish Widows' instruction was clear that it wouldn't simply pay the TFC on Mr L's request and that he would need to complete a further form at least, to continue the process. And I've compared this with the "*request information about accessing your pension*" form that was issued to Mr L which said, "*before you access your pension you may want to consider combining your pensions together. More information about this can be found on our website:*

Pension transfer | Combine online | Scottish Widows.

Accessing your pension normally involves a 2 step process where we explain your options and things to consider before you confirm your decision and provide us with payment details to complete your claim.

Some options can be completed using online forms and others will require a phone call.

This form is step 1 to request your Pension Summary Letter, we will then issue it out to you with next steps on how to access your pension if you wish to proceed."

I think this was consistent with what the adviser said, and it was made clear that Mr L needed to complete the form setting out his instruction which would then lead to the provision of an "illustration" of the benefits he wanted to draw – regardless of whether it was simply his TFC. I don't think Mr L had any issues with this process initially when he was informed about it, presuming that when he received the illustration, he could either call back or go online to confirm the details to Scottish Widows of where to pay his money.

However, as Scottish Widows confirmed, there was only one form it could send which did indeed set out all the options Mr L had.

I think that was reasonable because, before accessing his benefits, Mr L needed to be provided with a number of warnings and signposts to various other organisations (Pension Wise and Unbiased), as well as an understanding of the other available options. This was a regulatory requirement so that Scottish Widows could demonstrate it had provided Mr L with all the alternatives open to him.

Unfortunately, as the form was "multi- purpose", Mr L incorrectly selected the option that said, "*I want information about partial encashment*", triggering the provision of a retirement illustration from Scottish Widows on that basis. So when Mr L contacted Scottish Widows for the second part of the process, during which he expected the matter to be resolved, it became clear that an error had occurred.

I've also listened to that call in which Scottish Widows identified that Mr L had in fact requested a partial encashment, although he initially accepted this saying "*yes. I'd still like to take 25% though*". The adviser suggested Mr L had changed his mind, but he said, "*no I haven't changed my mind I always wanted to take 25%."*

I think this exchange supports what happened here. I think Mr L assumed that the form simply required him to set out the amount of TFC he required, and I don't think he fully understood the two options presented to him within the document. I note that neither option is entitled simply "*tax free cash*", so it's understandable that Mr L might not have realised the significance of ticking either box. I have considered whether Scottish Widows is culpable because of unclear information here, but I've seen that at the beginning of the section it explained that the difference between the options was, "*how and when your tax free cash is taken"* and then it provided a link for a comparison. Having looked into the link I'm satisfied that the option of flexi access drawdown made it very clear that this would provide the 25% TFC and leave the residual cash invested – which is what Mr L wanted to do.

So I think Mr L was made aware, albeit he would have to look a bit further into the document, that he should have chosen that option.

However, after the error was identified Scottish Widows explained that it would need to start the retirement journey process again so that it could generate the correct illustration for Mr L. I know, from the telephone conversation, that this caused Mr L a great deal of frustration and he was right to say that he feared this would lead to his fund value reducing further before he could access his TFC. But I don't think Scottish Widows did anything wrong at that point. It didn't have any option other than to ask Mr L to complete the form again and issue new documentation as this was regulatory requirement and, although Mr L would understandably have seen this as duplicitous and a further unnecessary delay, I don't think Scottish Widows had any alternative if it were to follow its agreed and stated retirement journey process at that point.

Of course the timing of this error and the affect it had was unfortunate - as Mr L's plan did indeed fall further and provide him with less TFC. But from what I've seen Scottish Widows did process the second request in a timely manner and I don't think it was responsible for the delay and losses that followed. Unfortunately this was a genuine error from Mr L, but I'm satisfied that Scottish Widows had satisfactorily explained its two stage retirement journey process, and that Mr L would need to compete the application form it sent and call back when he received the illustration to complete the process. That the initial "partial encashment" request it received from Mr L and the information it sent back to him was incorrect wasn't, in my view Scottish Widows' fault, and therefore I can't support the claim that it caused Mr L to receive less TFC than he anticipated. Indeed, during the second call Scottish Widows did confirm that it couldn't guarantee the fund value from that day and that it could fluctuate from that point until the process was eventually completed.

Summary

The fall in Mr L's plan value during 2022 was most unfortunate, particularly as it tied in with when he wanted to access his TFC. But as I've explained I can't support the idea that the losses were Scottish Widows fault as they were consistent with what was happening in the market – especially regarding the assets he was invested in – at that time. And the responsibility for recommending Mr L's investment strategy in line with his ATR, and its suitability for his needs, was that of his financial adviser. I've seen nothing to suggest that

Scottish Widows mismanaged the funds nor that it didn't apply the lifestyle strategy as it said it would.

And, although Mr L is right to say that he did request his TFC when he contacted Scottish Widows in September 2022, I think Scottish Widows followed the process it was obliged to do from that point and any delays that did subsequently occur were because of the genuine error Mr L made when completing the necessary application. I can't reasonably hold Scottish Widows responsible for the reduced TFC payment that occurred as a result.

My final decision

For the reasons that I've given I don't uphold Mr L's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 February 2024.

Keith Lawrence
Ombudsman