

## **The complaint**

Mr W's complains that Scottish Widows Limited gave him incorrect information about his Flexible Income Drawdown (FID) plan. He says he was given conflicting information about transferring to another pension plan with Scottish Widows which had much lower charges.

## **What happened**

Mr W's complaint was considered by one of our investigators. The background and circumstances to the complaint were set out in the investigator's assessment which he sent to both parties in November 2023. So I haven't reproduced all that background. But to recap, Mr W had a personal pension, and in 2017 he wanted to access some tax-free cash. The pension was held with another firm which I will refer to as Provider A. Provider A told Mr W that the only way to access his tax-free cash was through its Retirement Saver Account. And this was subsequently set up for Mr W.

Provider A's pension business was acquired by Scottish Widows. It wrote to Mr W saying that everything stayed the same except that it was now the administrators of his plan.

Mr W had changed addresses, and in June 2022 he received some backdated post from Scottish Widows. As a result he became aware of how much the charges were on his pension. He did some comparisons and research which led him to believe that Scottish Widows' Retirement Account was the appropriate place for his pension and it had much lower charges.

Mr W contacted Scottish Widows in July 2022 explaining that he had moved house and hadn't been getting letters. He said he'd become aware of the charges he was paying and asked for further information.

Mr W's plan was held by Scottish Widows' 'Workplace Pensions'. This appears to have been the cause of some confusion, with Mr W being given inconsistent information about his plan and what options he had over a period of time; in particular whether he could transfer to Scottish Widows' Retirement Account which Mr W thought was the best option for him.

Mr W complained to Scottish Widows in August 2022, and subsequently referred the matter to us.

The investigator didn't think Scottish Widows had made an error in not updating Mr W's address; Scottish Widows had said it had never received an updated address and the investigator said there was no evidence of it being sent.

The investigator said that although Mr W may now have more options available to him, at the time the pension was arranged there was only one option through Provider A. He said it was then a matter for Mr W to review his pension regularly to ensure it remained suitable for him – including charges – as he did in 2022. He said if Mr W was unhappy with the level of charges it was up to him to consider whether his pension requirements would be better met elsewhere.

The investigator said he agreed that Scottish Widows had given Mr W incorrect information – in particular about whether his pension was a ‘Workplace Pension’ and what he could do with it. But he said this didn’t change the way the pension itself worked. He noted Scottish Widows had said its staff were trained to know the products they dealt with rather than all the products offered by Scottish Widows. However the investigator said Scottish Widows should have directed Mr W to the correct department.

The investigator didn’t think Scottish Widows had acted unreasonably when it said that following it taking over Mr W’s pension nothing had changed but the administrator. He said Scottish Widows was referring to Mr W’s pension itself, and not the full range of pensions offered.

The investigator said Mr W did ask to transfer but wasn’t directed to the right department or given the right information that he needed to proceed; that ultimately he was able to transfer to the Retirement Account but this could only be done through a financial adviser.

Overall the investigator thought Scottish Widows had given Mr W incorrect information and didn’t go far enough in trying to understand his needs. He thought Scottish Widows should pay Mr W £300 for the unnecessary distress and inconvenience that had been caused.

Mr W didn’t accept the investigator’s findings. He said, in summary, that Scottish Widows had fundamentally changed its position since the case had been referred to the ombudsman service. He had consistently been told that the plan he had was the only option available to him and Scottish Widows had repeatedly said he couldn’t transfer to the Retirement Account. However it had now said he couldn’t transfer because he didn’t have an IFA – it had never told him that before.

Mr W said he’d had over 40 different interactions with Scottish Widows involving more than 20 different people in just over a year, and he provided details. He said throughout all this contact Scottish Widows hadn’t told him he could transfer by using an IFA. It had changed its position.

Mr W referred to the investigator’s assessment saying:

*"I note that the amount of charges applied to a pension plan is a commercial decision for SW and if [Mr W] was unhappy with this, then he would need to consider whether his pension requirements were best met elsewhere".*

Mr W said *"This important point is at the heart of my complaint and it is not correct. It contends that if I was unhappy I would NEED to look elsewhere, in other words, that was my only option.*

*This is essentially what both [Provider A] & SW told me from 2017 until I referred the matter to you.*

*They repeatedly told me that if I was unhappy my only option was to change providers.*

*We now know that what they told me was not true.*

*There was, and is, an alternative but SW refused to transfer me to The Retirement Account."*

There was some further correspondence between the investigator and Mr W. Ultimately, the investigator said he didn’t disagree with Mr W that Scottish Widows hadn’t told him that he could transfer to the Retirement Account but only through a financial adviser. But he said he needed to consider what would most likely have happened if Scottish Widows had done

what it was meant to. He said whilst it wasn't possible to say for sure, he didn't think it was likely that Mr W would have transferred to Scottish Widows' Retirement Account. He said this conclusion was based on Mr W's history of not involving a financial adviser previously in taking his pension benefits. The investigator said he didn't think compensation was appropriate in terms of assuming Mr W would otherwise have been in Scottish Widows' Retirement Account. The investigator also said if Mr W was going to transfer to another business he didn't see why he wouldn't have already done it, given the way he felt about the service he'd received from Scottish Widows.

Mr W responded to say that the investigator's assumption was contradicted by the evidence. He'd asked Scottish Widows on a number of occasions to transfer him to the Retirement Account. And they had refused. He said it was agreed by all parties that there was only one option available when he took his tax-free cash with Provider A. It was his opinion at the time that a financial adviser would not have changed this and it was not necessary, nor specifically recommended by Provider A.

I asked Mr W, through the investigator, for any further arguments or evidence to support his assertion that he would have transferred to the Retirement Account if Scottish Widows had told him it was possible using a financial adviser.

Mr W responded to say, in summary, that up until 2022 he hadn't considered transferring to the Retirement Account as Scottish Widows had always indicated he couldn't do so. And it hadn't mentioned it throughout the entire complaint's process. He said he'd asked Scottish Widows to transfer to the Retirement Account on a number of occasions and had spent two years pursuing the matter. Mr W referred back to what had happened over the course of his interactions with Scottish Widows. And said given all that had gone on it was reasonable to assume he would have taken the simple step of contacting a financial adviser to resolve the matter. He said when the matter was resolved he would certainly be transferring his pension to the Retirement Account or another provider.

Mr W said he hadn't transferred at the time he became aware of the charges because he didn't think the process would take so long, and he thought it would be more difficult to resolve the matter if he was no longer a client of Scottish Widows.

As an agreement couldn't be reached Mr W's case was passed to me to consider.

### **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.

As Mr W has said, he had a lot of interactions with Scottish Widows and over a long period of time. Mr W also had further correspondence with the investigator after he'd sent both parties his initial assessment of the complaint. I haven't repeated it all above, but I've taken it all into account in making my decision.

In my view Mr W was given misleading information by Scottish Widows about the options available to him once he started making enquiries about the matter following receipt of the statements in 2022. Scottish Widows should have told Mr W that he was able to transfer to the Retirement Account but that he needed to do it through a financial adviser. I realise that Scottish Widows may have different pension products administered by different departments. But that's a matter for Scottish Widows to organise. Mr W was entitled to expect to receive accurate and timely information.

I'm not persuaded that Scottish Widows provided misleading information when it took over

the administration of Mr W's pension. As the investigator said, in saying nothing had changed I think that would reasonably be taken as referring to Mr W's product itself. And I don't think it was misleading not to mention Scottish Widows offered other pension plans when responding to the question in the Q&A document about costs to transfer to another provider. The answer was provided in the context of a member being dissatisfied with the service being provided by Scottish Widows, and therefore might not wanting to stay with it.

I don't think the answer to question 2 was misleading either. It asked if there was a larger selection of products "...available to me without taking financial advice." The answer was that they would be the same. Mr W could only transfer to the Retirement Account by using a financial adviser. Without using an adviser his options were the same. So I don't agree this misrepresented the position. The Q&A document was a generic document sent out to all relevant policyholders. I think Mr W is looking back and considering the document in the context of the particular issue on his mind. Such documents can't cover every eventuality.

So I don't think Scottish Widows provided misleading information prior to Mr W contacting it in 2022. But I do think it provided inaccurate/misleading information during the subsequent interactions with Mr W from that time. Any remedy, if appropriate, would therefore be from when Scottish Widows first gave Mr W incorrect information sometime after he contacted it in July 2022. Therefore I need to consider the position from that point.

Mr W has said that if he'd known that he could transfer to the Retirement Account through a financial adviser he would have done so. And I've considered what he's said in support of that.

In 2022 Mr W became concerned about the level of charges. Mr W has said he compared them with other drawdown providers. And he found an independent online comparison from June 2022 "...showing alternatives with much lower comparisons." Whilst I accept he was told he couldn't transfer to the Retirement Account, he's said he was consistently told he could transfer to another provider. So Mr W was aware that there were other products available with lower charges with other providers that he could transfer to. However he didn't transfer.

We asked Mr W why he didn't transfer to another provider. He said he didn't think the matter would take so long to resolve, and he thought it would be more difficult to resolve if he was no longer a client of Scottish Widows. However the issue – his concern about being in a higher charging product – would have been resolved if he had transferred to another provider. I don't think the position was materially different if Scottish Widows had correctly told Mr W that he could transfer to its Retirement Account but would also have to use and pay for the services of a financial adviser – either way he could transfer to a lower charging product but would have to pay an adviser.

Mr W may not have used an adviser when the pension was arranged with Provider A. However I note that Mr W complained to Provider A in 2017. And in its response letter dated 18 October 2017 Provider A had referred to Mr W being unhappy with his previous experience of an Independent Financial Adviser and the costs they might charge for work. I don't know to what extent the adviser had previous dealings with Mr W's pension. But I think the point is that Mr W had some earlier experience of using an adviser and the associated costs.

I've considered the reasons Mr W has given for not transferring to another provider. And that he had consistently said he wanted to transfer to the Retirement Account during his dealings with Scottish Widows. But that was without using a financial adviser and its associated costs. As I've said above, Mr W could have used a financial adviser and transferred to a lower charging product but didn't. The incorrect information from Scottish Widows didn't prevent

him from doing that, which would have resolved the issue of him paying charges he thought were too high.

Taking everything into account, it seems likely to me that, on balance, there was some reluctance on Mr W's part to use a financial adviser given the possible costs. Mr W didn't transfer to another provider despite having the opportunity to do so. So I don't think it follows he would likely have used one to transfer to the Retirement Account. As I've said, I don't think the positions were materially different. Therefore I don't think it's more likely than not that Mr W would have transferred had Scottish Widows told him that he could transfer to the Retirement Account but only using a financial adviser.

However, there is also another factor to consider. A claimant has a duty to take reasonable steps to mitigate their position. As I've said, Mr W was aware that there were lower charging products available with other providers. So he could have transferred and not been subject to the charges he was unhappy about.

Mr W has said that he is willing to accept compensation on the basis that he now employs a financial adviser and transfers. Whilst I understand the inference is that he would always have been willing to incur the cost of a financial adviser, he is now in a different position. Mr W considers he should be refunded the difference in charges over a number of years. And has calculated the difference at over £500 a year. So a return of those charges would more than pay for the adviser's fees. That is different to paying an adviser a fee of £1,000 upfront (which Mr W has been quoted) and not knowing what that advice would be, or whether costs would actually be recovered or outweighed by differences in future investment performance over time.

However as I've said, it's clear that Scottish Widows didn't provide Mr W with accurate information and over a period of time. I'm satisfied this caused Mr W some distress and inconvenience. In my view £300 provides fair compensation for the unnecessary distress and inconvenience that the matter has caused Mr W.

### **My final decision**

Accordingly, my final decision is that Scottish Widows Limited should pay Mr W £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 22 February 2024.

David Ashley  
**Ombudsman**