

## **The complaint**

Mr W wants Scottish Widows Limited to refund the Annual Management Charge (AMC) because he doesn't consider Scottish Widows has managed his pension properly.

## **What happened**

Mr W has an income drawdown plan with Scottish Widows. The plan was set up in 2006 and operated without any issues until 2022 when, from April 2022 to January 2023, Scottish Widows failed to make any monthly income payments to Mr W.

Mr W complained to Scottish Widows in September 2022. Scottish Widows sent their formal response in February 2023. Scottish Widows accepted that the level of service Mr W had received was below the expected standard and offered compensation of £1,143 – made up of £850 for distress and inconvenience, £64 to cover the cost of telephone calls to Scottish Widows and interest of £299 (8% interest on each of the missed payments).

Scottish Widows issued a further response on 22 June 2023. Scottish Widows wasn't prepared to reimburse the AMC but increased the compensation offered for distress and inconvenience by £700, so £1,550 in total.

Mr W remained unhappy and referred his complaint to this service. Our investigator thought the compensation offered was fair and reasonable for Scottish Widows' failure to pay Mr W his income payments for some 10 months. Mr W accepted that but maintained the AMC should be refunded during the period in question.

Mr W had also made the investigator aware of some further points. To finance Mr W's monthly income payments, Scottish Widows were required to sell units in the investments held. As Scottish Widows hadn't provided him with any income payments from April 2022 to January 2023, they couldn't have carried out the process of selling units each month. During the time in which he didn't receive income payments, Scottish Widows also lost his policy information. So he wouldn't have been able to request switches to his investments or a transfer of his plan to another provider. In consequence, Mr W didn't consider Scottish Widows had provided a satisfactory service to justify the fees they'd charged and so the AMC should be refunded.

The investigator set up a new complaint – Mr W's current complaint. The investigator referred the issues Mr W had raised to Scottish Widows who issued a formal response on 19 October 2023.

Scottish Widows said they were unable to refund the AMC as it was integrated into the unit prices of the investments which was why the offer of compensation for distress and inconvenience had been increased to £1,550. Although Mr W hadn't received income payments for 10 months, the AMC covered the overall costs Scottish Widows incurred when providing Mr W with a service. Despite that service having fallen below the standard expected in certain areas, Scottish Widows had still incurred costs which they needed to cover.

The investigator didn't think Scottish Widows needed to do any more. He could understand why, if the policy paperwork had been lost, Mr W doubted that a switch or transfer could've been facilitated. But Scottish Widows hadn't received any switch or transfer requests during the period from April 2022 to January 2023. We couldn't ask a business to pay compensation for mistakes which could've happened but didn't.

The investigator also said that, as part of the income drawdown plan, Scottish Widows were required to sell units to finance Mr W's income payments. And, as Scottish Widows hadn't made any income payments to him from April 2022 to January 2023, it was possible that they didn't sell any units during those 10 months. But the investigator accepted Scottish Widows' argument that the 1% AMC, which is applied annually, encompasses all the costs incurred in administering Mr W's policy. Units may not have been sold from April 2022 to January 2023 but there were other areas of cost which Scottish Widows had to cover.

Scottish Widows had increased their offer of compensation for distress and inconvenience by £700. Scottish Widows had considered the fact that they were unable to refund the AMC and had offered more compensation because of this. The investigator considered the total compensation offered (£1,843) for Mr W's first complaint was fair compensation for Mr W not receiving income payments for 10 months. The investigator also shared the information we'd been given by Scottish Widows.

Mr W didn't accept the investigator's view. Mr W didn't think all of his points had been considered and he wanted to comment on information from Scottish Widows which he hadn't previously seen. I've summarised what I see as Mr W's main points:

- During the 10½ month period from 16 March 2022 to 31 January 2023, Scottish Widows did nothing at all to manage his income drawdown plan. He shouldn't have to pay any charges to Scottish Widows during that period.
- He'd been asking Scottish Widows for over 13 months to tell him what their charges during that period were. But Scottish Widows had failed or refused to provide details. He'd calculated he'd been charged £1,570. But he'd only received compensation of £1,550 so he was £20 out of pocket. That wasn't fair and when it was Scottish Widows who'd breached their contract with him by failing to properly manage and administer his plan.
- Scottish Widows hadn't explained in any detail what had happened and what had led to his income payments not being made. Nor had Scottish Widows said what work had been done on his plan during the period in question. As he'd been told Scottish Widows had lost details of his plan, he assumed no work had been carried out.
- His income drawdown plan had been mismanaged in a number of respects. Including failing to notify him that his monthly payments had stopped; losing his plan details, taking over 14 weeks to appoint a complaints manager; taking 10½ months to sort out the problems; and not selling any units in his funds.
- On the last point, clause 2.21 of the policy provisions says each fund will be valued at least once in each working week and normally in each working day. It was unclear how many times, during the 10½ months, a valuation was carried out and if not each week why not. And copies of the valuations weren't supplied as required by clause 2.4.1.
- He set out a schedule of nine tasks/actions he considered part of the administration and management of his plan. He didn't accept that making the monthly income payments wasn't part of managing his plan and which involved a lot of work across different departments for which Scottish Widows would expect to be paid.
- He shouldn't have to pay auditors/accountancy fees without details of what actual auditing/accountancy work was done on his plan during the period in question. He suspected nothing was done as the auditors or accountants would've picked up on

the problems. Nor should he be liable for other people's fund costs when Scottish Widows had failed to deal with his funds. He made similar points about Authorised Corporate Directors' management costs and those of research analysts, portfolio and investment managers and legal costs.

- About investment costs, his letter of 4 December 2023 contained documentary proof from Scottish Widows that no units in any of his 10 funds had been sold between 10 March 2022 and 10 January 2023. Scottish Widows had told him that investment work had been contracted out to Blackrock. But his contract is with Scottish Widows whom he pays to manage his investments and his plan.
- Since 2006 a contract had been in place between him and Scottish Widows under which it was agreed that, in consideration of him paying Scottish Widows' charges to manage, administer and invest his income drawdown plan, they'd pay him each and every month the agreed monthly payments from his plan. Payments suddenly stopped sometime after 15 March 2022. That was a clear breach of contract which continued from April 2022 until February 2023.
- It was a fundamental breach of contract as the whole purpose of the contract and of him paying Scottish Widows' charges was for Scottish Widows to provide him with regular monthly payments. There'd been numerous opportunities to remedy the breach by reinstating payments earlier but Scottish Widows had failed or chosen not to do so for over 10 months. His understanding of the legal position was that where there was a fundamental breach, the party in breach can't make the other party pay charges due. So Scottish Widows couldn't legally charge him during the 10½ month period. And, in any event, he'd provided information showing that Scottish Widows didn't actually do any work to manage or administer his plan for over 10 months.

In accordance with Mr W's request, the complaint has been referred to me to decide.

### **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.

This is Mr W's second complaint arising out of the same issue – Scottish Widows' admitted failure to make monthly income payments to Mr W for more than 10 months. Mr W accepted Scottish Widows' offer of £1,550 as compensation for the distress and inconvenience he'd been caused. So I'm not going to revisit that aspect of the matter here. Mr W's current complaint centres on the AMC which he considers he shouldn't have to pay for the period during which Scottish Widows didn't make any income payments to him.

I note what Mr W has said about Scottish Widows not having explained in any detail what went wrong. But I understand Mr W was told that a new computer system was to blame. I don't think much is likely to be gained by trying to find out exactly what went wrong. Sometimes it won't be possible, after the event, to pinpoint the precise system or other failings.

Mr W's income drawdown plan has been in place since 2006. He hasn't previously complained about charges and when Scottish Widows were making the agreed monthly payments and during which time he considers his plan was properly administered and managed. Nor has he any complaint about Scottish Widows' charges from February 2023 onwards when his monthly payments were resumed. But he feels very strongly that he shouldn't have to pay the AMC between 16 March 2022 and 31 January 2023 when he says his plan wasn't properly managed by Scottish Widows.

I've taken into account all Mr W has said. I do understand his position. But, and although I know Mr W will be very disappointed, I'm unable to agree with him that he shouldn't have to

pay the AMC for the period in question, even though there were serious problems which meant his income payments weren't made for the best part of a year.

Essentially, I agree that, despite Scottish Widows' failings, there were costs which still had to be covered. And I don't agree that there's the direct correlation that Mr W suggests between the AMC and work undertaken specifically in relation to his plan. Or that it's necessary for Scottish Widows to be able to point to instances where it undertook, for example, auditing, accountancy or legal work, specifically in relation to Mr W's plan. The same is true of the other functions Mr W has pointed to and taking into account that his plan and his investments remained in force throughout.

The majority of the nine tasks/actions Mr W has listed as things which Scottish Widows failed to do relate specifically to the payment of his monthly income payments, rather than to the plan's overall management. On that basis, although I don't expect Mr W to agree, I think there were administrative failings in respect of Mr W's plan, as opposed to management issues, the latter being wider and pertaining to the plan and investments more generally.

Even though Mr W's plan details were lost for a period, his plan remained in force and so the usual 'background' management work continued in the usual way. I don't agree he's been charged other investors' fund costs. As I've said, his investments remained in place and Scottish Widows continued to manage them. I think that's different to what Mr W has pointed to – Scottish Widows' failure to sell units to meet his monthly income payments and which I accept didn't happen.

I take Mr W's point about managing the investments and that his contract is with Scottish Widows, not Blackrock. It's a matter for Scottish Widows if functions are delegated to a third party but Scottish Widows will remain responsible to Mr W as his contract is with Scottish Widows and he pays the AMC to Scottish Widows. But, given what I've said about Mr W's investments having remained in place throughout, I don't agree there's an issue with Mr W having to continue to pay Scottish Widows for those services as part of the AMC.

Mr W has referred to clauses 2.2.1 and 2.4.1 of the Income Drawdown Policy Provisions. Clause 2.2.1 says Scottish Widows will value each fund at least once in each working week and normally once each working day. And clause 2.4.1 refers to the management charges being deducted. But I think the valuations are in respect of the funds themselves, rather than to Mr W's holding – that is the number and value of the units allocated to his policy. I can't see there's any obligation to provide copies of valuations.

Mr W considers his most compelling argument is the legal position. I'd point out that we don't approach things in the same way as the courts. I reach my decisions on the basis of what's fair and reasonable. Dispute Resolution (DISP) 3.6.4R says, in considering what's fair and reasonable in all the circumstances of the case, the ombudsman will take into account, amongst other things, relevant law. I've done that. But I still don't think that means Mr W shouldn't have to pay the AMC for the period in question.

I don't disagree that Scottish Widows breached the contract with Mr W by not paying his monthly income payments. And I can see why Mr W might regard that as a fundamental breach. My understanding is that's a breach which goes to the root of the contract and such that the injured party can't be expected to continue with the contract. But I don't see that's really the situation here and taken in the context that Mr W's drawdown plan has been in existence since 2006 and that up until 2022 there were no issues. And since payments were resumed in 2023 I'm not aware that further issues in connection with Mr W's income payments have arisen.

In the circumstances, I think the appropriate remedy for Scottish Widows' breach of contract is damages or what we'd term compensation for financial loss. Scottish Widows has made up the missing payments plus interest at 8% (which is the rate we'd expect to apply in a situation such as this where someone has been kept out of their money).

In reaching my conclusions I've also noted what Mr W said about our investigator having asked Scottish Widows (his email of 19 December 2023) to provide evidence that all actions to justify the AMC had been carried out but no evidence was forthcoming. But, as I've explained, I don't agree that it's necessary for Scottish Widows to demonstrate it undertook any or all of the functions on an individual basis.

Mr W has also mentioned that he couldn't sell units himself nor could he switch funds as details of his plan couldn't be located on Scottish Widows' computer system. So he could've lost out by not benefiting from any investment decisions. But I agree with what the investigator said about this aspect of the matter – that although there could've been a problem, as Mr W hadn't wanted to switch funds or transfer, it wouldn't be fair to make any award.

Scottish Widows initially offered £850 for distress and inconvenience and then increased that to £700 so £1,550 in all. Mr W has calculated that his fees were about £1,570 so he considers he's been left out of pocket. But that's on the basis he's entitled to a refund of the AMC for the period in question and which I'm unable to agree he is. I note that Scottish Widows' letter of 19 October 2023 indicates that it wasn't possible to reimburse the AMC because the fee was integrated into the unit prices of Mr W's investments and that was taken into account in making the higher offer of compensation. That might suggest Scottish Widows agreed that some refund of the AMC was due. But, given what I've said about why I consider the AMC remained payable by Mr W in any event, I'm unable to make an award in respect of the AMC.

For the reasons I've set out I'm unable to uphold Mr W's complaint and I'm not making any award.

### **My final decision**

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 May 2024.

Lesley Stead  
**Ombudsman**