

## The complaint

Mrs F complains that Scottish Widows Limited (SWL) breached its terms and conditions when it accepted a gross contribution into her personal pension. She said it then incorrectly added tax relief, which led to her incurring an Annual Allowance (AA) tax charge. She felt that SWL should've informed her of this and refused the payment.

Mrs F further complains that SWL didn't make her aware of the Scheme Pays option for paying the tax charge until it was too late to comply with the deadline for that option, which it didn't inform her about.

## What happened

Mrs F has a personal pension with SWL. I understand that in early 2023, she wanted to make a contribution into that plan. SWL asked Mrs F some questions about her contribution. She responded to these questions on 20 January 2023. She said that her yearly salary was £71,500, which was less than the £79,344 payment amount she'd requested. Mrs F also sent SWL a spreadsheet with her estimated tax position for the 2022/23 tax year.

SWL told Mrs F that it could only accept 100% of her salary each tax year, including: "*carry forward and tax relief*". It said she'd already contributed £11,645.42 within that tax year, so felt she only had £59,854.58 left of her £71,500 salary. It also said: "*As we add 20% tax relief on top of the payments, this means we can receive up to £44,890.94 from yourself and we will add the 20% tax equalling £14,963.64.*" SWL asked Mrs F how she wanted to proceed.

SWL wrote to Mrs F again in January 2023 to tell her that she needed to consider any further payments in that tax year from her employer, as such contributions would also be included in the maximum amount she could pay in.

Mrs F replied to SWL to tell it her accountant had calculated that her gross taxable pay for 2022/23 would be £149,716. She said: "*This is why she had advised that I could contribute £71500 onto my pension.*"

SWL replied to Mrs F on 2 February 2023 to thank her for the information she'd provided. It said it had initially based the amount she could pay in on the annual salary of £71,500 she'd originally quoted.

SWL wrote to Mrs F on 10 March 2023 to confirm that her single contribution had been processed.

On 12 September 2023, SWL sent Mrs F her 2022/23 AA statement. It said she could use the enclosed AA statement to check all pension contributions against the AA. The statement noted it only included contributions paid into Mrs F's pension policy held with SWL. It said that in the 2022/23 tax year, she'd contributed £110,771.67 into her plan, against the usual AA of £40,000. The letter stated:

*"If, after reviewing all aspects of your personal circumstances, you are over the limit set by*

*HMRC, you may incur a tax charge.*

*... You're responsible for determining if you are liable for a tax charge and letting HMRC know if you are.*

*... Please be aware that we can't give you any tax advice. We strongly recommend you speak to your adviser if you're unsure about your personal tax circumstances."*

The letter also included a section explaining what Mrs F should do next. This included the following statement:

*"We can't provide advice on personal tax circumstances. Due to the complexity of the Annual Allowance rules we strongly recommend that you speak to a financial adviser."*

Mrs F complained to SWL about the tax charge she might incur.

SWL issued its final response to the complaint on 27 December 2023. It said it had acted within its terms and conditions and hadn't made an error. But it said it would refund any contribution Mrs F had paid in over her UK relevant earnings, as it felt this could lead to her not paying an AA charge. It said it could only refund what had been paid in over Mrs F's relevant earnings. SWL said that if Mrs F did incur a tax charge, she would be able to use Scheme Pays to cover this from her pension savings.

I understand that SWL further clarified to Mrs F later on that it wouldn't be possible to refund any value, as the amount paid in was still under her relevant earnings for the year. It said that when it'd offered to look into such a refund, it'd been under the impression that the contribution had exceeded Mrs F's relevant earnings. But this wasn't the case.

Mrs F didn't agree with SWL. So she brought her complaint to this service. She said SWL hadn't made her aware that her contribution would incur a tax charge. She felt that it had been clear that her contribution was gross. And therefore SWL should've told her it couldn't accept such a contribution and refused the payment.

Mrs F also felt that SWL had been confusing and contradictory in dealing with the situation. She didn't understand why it was prepared to refund an overpayment if she'd exceeded her relevant earnings, but not the gross payment circumstance. She felt SWL should transfer the overpayment to the following tax year. She said the issued had caused her severe stress and anxiety.

SWL told this service that its terms and conditions stated that it didn't accept gross payments. And that it had no way of vetting whether a payment was gross. It said that neither the email Mrs F had sent with her contribution request, nor the spreadsheet she'd provided, had made it clear that the amount paid in was gross. SWL also said that it had made Mrs F aware in January 2023 that it would add 20% tax relief to all payments.

Our investigator issued his first view on the complaint on 21 February 2024. He didn't think that SWL had done anything wrong. He felt that it'd done what was expected of it when it had queried whether Mrs F's requested contribution was within her relevant earnings for the year. But he didn't think it was reasonable to expect SWL to question whether or not the level of contribution could take Mrs F over her AA. He said this was because SWL wasn't Mrs F's adviser, so it wasn't its role to question her actions in this way. Instead, its role was to carry out her instructions.

Our investigator felt that the terms and conditions, as well as an email SWL had sent Mrs F on 27 January 2023, had made it clear that tax relief would be added to any payment it

received. He also didn't consider that Mrs F had made it clear that the payment in question was to be made gross.

Mrs F called SWL on 22 February 2024 to ask it about Scheme Pays. SWL explained the deadlines for Scheme Pays requests. It said that for voluntary Scheme Pays, a request would've been needed by 31 December 2023. And that as that date had now passed, Mrs F wasn't eligible for Scheme Pays.

Mrs F said that SWL had first told her on 27 December 2023 – at the time it issued its final response letter - that Scheme Pays was an option. She said it hadn't told her at that time that it was only an option for four days. She felt that her complaint hadn't been resolved within the 8 weeks it should've been resolved in.

Mrs F didn't agree with our investigator. She felt that SWL's terms and conditions stated that it couldn't accept gross payments. And that she'd made it clear in communications with SWL that her contribution was a gross payment. And that therefore SWL should've refused that payment, in line with its terms and conditions.

Mrs F also said that she'd just discovered that although Scheme Pays had been an option for her to pay the tax she owed, she would've had to request this by 31 December 2023. She said SWL didn't make her aware of this deadline.

Our investigator issued his second view on the complaint on 25 March 2024. He considered Mrs F's further points, including the Scheme Pays complaint point. He still felt that SWL couldn't have known from the information provided that Mrs F didn't want tax relief applied to her payment. And he didn't consider that SWL could've been expected to provide full information on Scheme Pays during a recent phone call between it and Mrs F.

Our investigator said SWL had written to Mrs F on 12 September 2023 to ask her to check her 2022/23 AA statement. He felt this letter had made it clear that it was her responsibility to handle her AA and any additional tax charges for any overpayments. And that the letter had made it clear that she should seek financial advice if she was unsure on what was best for her, as SWL couldn't provide such advice. He said SWL had sent this letter well ahead of the Scheme Pays deadline. And therefore felt that if Mrs F had sought advice at this time, the Scheme Pays option could've been provided.

Mrs F didn't agree with our investigator. She said she was still perplexed that SWL was prepared to refund any overpayment against relevant earnings, but not when the payment exceeded the AA. She also said that she was willing to simply move the overpayment to the following tax year. She felt that, regardless of fault, it was poor that SWL wouldn't help her.

Mrs F also complained that SWL provided her with, and charged her for, advice. Our investigator explained that complaint would first have to be put to SWL before this service could consider it.

As agreement couldn't be reached, the complaint has come to me for a 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.

Having done so, I'm not going to uphold it. I know this will be disappointing for Mrs F. I'll explain the reasons for my decision.

I first considered whether SWL should've rejected the contribution.

*Should SWL have rejected the contribution?*

Mrs F feels that SWL's terms and conditions stated that it couldn't accept gross contributions. And that it had therefore breached its terms and conditions when it accepted hers. She feels she was clear that her contribution was gross. And that SWL should've informed her that it couldn't accept the contribution and refused the payment.

Mrs F feels that anyone in SWL looking at the calculation she'd provided it with would've known that her intended contribution was gross, as they are pension experts.

SWL said that its terms and conditions state that it only accepts payments that are eligible for tax relief, not paid in gross, and under relevant earnings. It said that in line with its terms and conditions, it adds 20% tax relief to all one-off payments made into the plan. SWL also said that it had made this clear to Mrs F in its January 2023 email.

As our investigator said, SWL was the administrator and plan provider, not the adviser. So it wasn't its role to look at the calculations Mrs F had provided and assess whether or not she intended to make a gross contribution. Its role was simply to make sure Mrs F had enough information on how it accepted payments so that she could make her own informed decision about how much she wanted to contribute, and then to process her instructions.

The terms and conditions state under section 7.6 *Tax relief and tax charges*:

*"We will not accept any payments from you that are not eligible for tax relief. The maximum limit for payments that are eligible for tax relief is the greater of your yearly earnings and the basic amount of £3,600."*

*"We receive tax relief at the basic rate on payments made on your behalf, excluding payments from your employer. However, HMRC only allow tax relief on personal payments up to age 75. We will credit this tax relief to your plan at the same time we receive your payment."*

From what I've seen, the terms and conditions are clear that SWL couldn't accept gross contributions. But I can't reasonably agree with Mrs F that she made it clear to SWL that her contribution was gross. So I couldn't therefore expect SWL to have informed her that it couldn't accept the contribution.

I say this because I've not been prevented with any evidence which made it clear to SWL that the contribution was a gross contribution. And in any event, the terms and conditions mean that SWL accepts contributions on the basis that they are eligible for tax relief. It isn't its role to assess whether or not this is the case. I also agree with SWL that it had made Mrs F aware that this was its process in its January 2023 email.

The evidence shows that SWL followed its terms and conditions when it added 20% tax relief to Mrs F's contribution. So I'm satisfied that there was no breach here. And I can't reasonably expect SWL to have rejected the contribution.

I next considered Mrs F's point that she didn't understand why SWL was prepared to refund an overpayment if she'd exceeded her relevant earnings, but not when the payment exceeded the AA.

*Should SWL refund the overpayment caused by the addition of tax relief?*

Mrs F felt that SWL had adhered to its terms and conditions in one way but not in another. She also said that she was willing to move the overpayment to the following tax year.

As I noted earlier, it isn't SWL's role to check whether a contribution is gross or not. It makes it clear in its terms and conditions that contributions are assumed to be eligible for tax relief. Therefore I'm satisfied that it met its terms and conditions when it added tax relief to Mrs F's contribution.

The terms and conditions also explain that there's a limit on the amount of contributions that are eligible for tax relief. And that the limit is the greater of yearly earnings or £3,600. SWL is therefore required to ensure that consumers don't contribute more than their yearly earnings. It queried Mrs F's original contribution request on this basis, as she'd not yet explained that her earnings were much higher than the salary she'd informed SWL of.

SWL said it made its final response offer to refund any contribution Mrs F had paid in over her UK relevant earnings as it felt such an overpayment had occurred. Had this happened, SWL would've effectively breached its terms and conditions. But, once it became apparent that there'd been no such overpayment, it couldn't make a refund, as there'd been no breach.

Therefore, while I acknowledge that Mrs F thinks that SWL ought to be able to at least transfer the overpayment to the following tax year, I can't fairly agree.

I finally considered Mrs F's complaint about not being offered the Scheme Pays option in a timely fashion.

### *Scheme Pays*

Mrs F said that SWL didn't make her aware of the Scheme Pays option until it was too late. And that it didn't offer her the option of Carry Back. She also felt that she would've had longer to arrange the Scheme Pays option if her complaint had been resolved within the 8 weeks it should've been resolved in.

SWL said it couldn't advise Mrs F. And that she'd not made it aware that she wanted to use Scheme Pays until after the deadline. It said as a pension provider, it couldn't itself persuade someone to make one decision over another. And that it always suggested that consumers took financial advice. SWL felt that if Mrs F had requested Scheme Pays, rather than asking it to refund an overpayment, it could've provided this before the deadline.

I can see that SWL specifically mentioned the Scheme Pays options to Mrs F in its final response letter and during the call it had with her at that time. But it didn't mention that this option would expire four days later on 31 December 2023. Mrs F said she only found out about the deadline when she called SWL in February 2024, by which time it was too late.

The evidence shows that SWL sent Mrs F an AA statement on 12 September 2023. This explained that Mrs F might've incurred an AA tax charge. And that it was her responsibility to determine whether or not she was liable for one. The letter stated that SWL couldn't provide Mrs F with advice on this issue. And that she should speak to her adviser if she was unsure about her personal tax circumstances.

This letter was sent three and a half months before the Scheme Pays deadline. I'm satisfied that the letter was clear that it was Mrs F's responsibility to make sure she let HMRC know if she was liable for a tax charge. And that she might need advice on this, which SWL couldn't provide. I'm therefore satisfied that this letter provided Mrs F with enough information that she could've looked into her options about any potential AA charge after receiving this letter.

And if she'd done that, I'm of the view that she would've had enough time to elect the Scheme Pays option.

The terms and conditions stated under 7.6.2 *Annual Allowance charge*:

*"Payments made by both you and your employer count towards the annual allowance. If your own and your employer's payments exceed the amount specified by HMRC, you can ask us to pay any charge directly from your plan value. If we agree to pay the charge, we will arrange for investments to be sold in line with your instructions to meet this charge."*

So I'm satisfied that SWL provided Mrs F with enough information in September 2023 to enable her to identify that Scheme Pays might be a viable option for her.

In any event, I agree with our investigator that it wasn't SWL's role to advise Mrs F on this issue.

I'm sorry that this issue has caused Mrs F severe stress and anxiety. But I've found no evidence that SWL breached its terms and conditions, or that it made any errors. Therefore I can't reasonably uphold this complaint.

### **My final decision**

For the reasons explained above, I don't uphold Mrs F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 30 April 2024.

Jo Occleshaw  
**Ombudsman**