

The complaint

Mr T complained about a number of matters relating to the service provided by Scottish Widows Limited (SW) when it came to his Group Self-Invested Personal Pension (GSIPP).

What happened

Mr T's GSIPP was set up by his employer and is provided by SW. He has been using this GSIPP for trading on a regular basis.

Mr T complained to SW about a number of different matters. SW responded in a letter dated 22 December 2022. The complaints addressed in SW's letter related both to specific intended trades and activity, as well as wanting SW to tell him more about when there would be options added to their system, and system updates and other matters addressed.

SW upheld part of Mr T's complaint in the letter of 22 December 2022. In this they provided an apology and explanations in respect of certain points. They also set out various loss calculations they had completed, the outcomes and what redress they would pay. At this time SW also offered Mr T £250 taking everything into account and to meet his inconvenience. There was also an area in which they asked him for further information.

In respect of one delayed trade SW considered Mr T had benefited by the delay when it came to the prices when the trade was completed. For this reason SW didn't offer to do anything further. They noted they had not been able to calculate a further matter in respect of a potential trade but said this had been taken into account when reaching their overall offer. In respect of two further trades approximately £23 and just over £58, needed to be paid to Mr T. And SW offered to look into some other trades.

SW told Mr T that a number of the matters he had raised (including system problems, and a document that could not be downloaded) were due to be addressed in their next system release and update. They also explained the answer they had received from their IT department in respect of various matters Mr T had queried about messages and options displayed.

Mr T didn't accept SW's offer and contacted this Service.

On 2 March 2023 SW issued a second letter in response to his complaint. They noted various matters including the need for further contact and as such increased their offer by £100 to £350 in total. Mr T didn't think this was reasonable.

SW let us know that they did not consider a number of the issues raised by Mr T specifically impacted a customer and felt they could be properly described as being frustrations and concerns that Mr T has with the design of the platform.

They noted Mr T's chosen way to frequently trade and explained their platform had not been designed to be used as a daily share-trading platform. They say this is why some of the issues he has experienced have taken longer to resolve. SW also said that a number of the

issues have been dependent on system updates and changes and said they had tried to keep Mr T informed about these but that sometimes this had not been possible.

An Investigator at this Service confirmed with Mr T that the outstanding issue of complaint to be considered by this Service relates to failed trades on 14 November 2022.

14 November 2022 trades

On 14 November 2022 Mr T placed a buy for units in a holding ('Holding A'). This didn't proceed due to a system error. SW say the overall unit price at the time was £985.12. Mr T indicated at the time he intended to sell this holding that day and use the proceeds to buy units in a different holding ('Holding H') also on the same day. Parties are aware of which holdings I am referring to.

SW accepted responsibility for these trades not being completed. They went on to explain their loss calculation that was completed in April 2023 and why they said these failed trades had not caused Mr T any loss.

It is SW's approach to the loss calculation that Mr T doesn't agree.

SW approached the loss calculation completed on 11 April 2023 on the basis of what they say Mr T wanted to do on 14 November 2022. They say this was that he intended to buy and then sell holdings in Holding A and that he would have then used the proceeds of the sale of Holding A to buy units in Holding H, all on the same day. As such they say they used Mr T's intentions in their loss calculation in working out what would have happened if he had been able to proceed on 14 November 2022 and whether he experienced a loss.

SW used the highest and best price that could have been realised by Mr T if the buy and sell of Holding A had completed on the day and said this was £1,018.46.

Then SW looked at the price of Holding H units on the day (minus the £9.50 dealing price and £5 stamp duty).

On that basis SW calculated that Mr T would have been able to use the proceeds from the Holding A trade to buy 297 units in Holding H (and £3.21 would have remained that was not sufficient to buy any unit).

SW went on to calculate that on 11 April 2023, a 297 unit holding in Holding H would have a value of £850.85.

On that basis SW concluded Mr T had not suffered a loss by not being able to complete his intended trades on 14 November 2022. In other words the 297 unit holding that Mr T could have purchased in Holding H on 14 November 2022 with the proceeds of the sale of Holding A would have a reduced in value by 11 April 2023.

Mr T doesn't accept this. He says his instruction that he would have purchased Holding H on the same day was not definitive. He told SW that he had only asked them to look at remedying the failed Holding A trade. And that previously SW have approached loss calculations when looking at filed transactions on the basis of the purchase alone, he thinks they ought to do the same here.

Mr T says that if SW did the loss calculation as he says they ought to, by only looking at the sale of Holding A units this would show he has lost out on around £1,000.

SW said this wasn't the right approach here as Mr T had been clear with what he intended to do with the proceeds of selling the Holding A units, in that he intended to purchase Holding H units on the same date, whilst with previous trades he had not been certain.

Investigator's view

The Investigator thought SW's offer was fair. This being in respect of the approach used for the loss calculation for 14 November 2022 as well as the sum offered for Mr T's distress and inconvenience.

Mr T didn't accept the Investigator's view and the case was referred for an Ombudsman's decision. Mr T stressed he didn't provide a definitive instruction and told us he expects SW to calculate loss in the way they have done before as he set out.

Further information

After Mr T's complaint was referred to me, I asked SW to provide some additional information. In summary they let me know:

- Mr T made SW aware on 15 November 2022 of his intention to buy Holding A units and sell them the same day and use their proceeds to purchase Holding H units.
- A sale of units in a third holding was placed on 25 November 2022 and cleared the same day.

I asked about this as I had seen reference to Mr T requesting a sale of holdings in this third entity to purchase units in Holding H shortly after 14 November 2022.

- Between 1 November 2022 and 31 January 2023 there were the following transactions involving Holding H:
25 November 2022 Mr T bought 246 units in Holding H at a cost of £784.67
4 January 23 Mr T bought 272 units in Holding H at a cost of £788.63
10 January 23 Mr T sold 271 units in Holding H for a price of £844.38
18 January 2023 Mr T bought 333 units in Holding H at a cost of £1,097.24
- Mr T still has holdings in Holding H.
- To determine all and any buys and sells made by Mr T involving Holding H would be demanding given the number of transactions that would need to be reviewed.
- A complaint about the error that prevented the 14 November 2022 trades from going ahead has been made by Mr T. He wanted this dealt with as a separate complaint.

For completeness this last point means I am unable to consider this matter as part of this complaint.

Provisional decision

On 29 February 2023 I issued a provisional decision. In it I explained I intended to uphold the complaint in part. This was because whilst I thought SW's understanding of Mr T's intentions was accurate, I thought SW ought to make an adjustment to their loss calculation exercise.

I explained I intended to find Mr T had sufficiently indicated he intended to use the proceeds of a trade involving Holding A to buy units in Holding H. I thought this was what Mr T was going to do, based on what he had said at the time, and as such I thought it was fair and

reasonable for SW to have approached the loss calculation here on the basis this was what Mr T would have done.

However SW's loss calculation used 11 April 2023 as the date to compare the value of the number of units that could have been bought in Holding H on 14 November 2022.

I thought there was an alternative approach to be used here. This did not solely use 11 April 2023 to compare the value for the number of units that could have been bought in November 2022. Whilst the April date appeared to be a random date used by SW when it came to complete the loss calculation, I felt that here there was an alternative approach that to some extent overcame the potential assumption that it was reasonable to conclude Mr T would have held any Holding H units bought on 14 November 2022 until 11 April 2023. I was able to reach this thinking due to the nature of the evidence available here.

Given what is known about Mr T's general approach to trading as well as his buying and selling of Holding H from November 2022 until January 2023, I thought it was reasonable to adjust SW's loss calculation to a limited extent.

So I indicated I intended to find there needed to be a limited amendment to the redress calculation proposed by SW. Instead of using only the 11 April 2023 date for the loss comparison I proposed that the amendment would allow for the likelihood of Mr T selling some of the units prior to 11 April 2023.

SW said Mr T could have bought 297 units in Holding H with the proceeds of the Holding A sale on 14 November 2022. SW would need to split the hypothetical 297 unit holding in half and calculate the value of 149 units of Holding H on 10 January 2023 and 148 units of Holding H on 11 April 2023. And then total these values and compare them to the value of the 297 units on 14 November 2022.

This reflected my intended finding Mr T would have completed the Holding A trades and used the proceeds to buy units in Holding H on 14 November 2022 had the error preventing the trades not happened.

So if Mr T's holding of 297 Holding H units on 14 November 2023 would have had a higher value compared to a total combined value of 149 units of Holding H on 10 January 2023 plus 148 units of Holding H on 11 April 2023, then he had not suffered a loss.

However if the total value of 149 Holding H units on 10 January 2023 plus 148 Holding H units on 11 April 2023 was higher than the value of 297 Holding H units on 14 November 2022 then Mr T had suffered a loss, and this would need to be paid in the way set out. I accepted my intended approach didn't mean there was only one fair approach.

I also indicated I thought SW's offer of £350 was fair in the circumstances.

Responses to my provisional decision by SW

SW provided a copy of the email sent by Mr T on 15 November 2022 and apologised it had not been provided before.

This email is dated 15 November 2022 and a time is shown of 12.29. I do not consider the time of any determinative relevance. It was sent to the SW customer feedback department and the SW workplace savings department. It sets out that on 14 November 2022 Mr T had tried to perform a purchase of Holding A shares. *"My intention was to sell these the same day and use the proceeds to purchase [Holding H] ... however there would seem to be SW*

error [and] the purchase has not taken place. This has several impacts on myself included added stress and also has caused detrimental financial impact.”

SW have said they are concerned if my decision indicates it is for a customer to choose the remediation approach.

Responses to my provisional decision by Mr T

Mr T does not agree with my provisional decision. He continues to think he only provided a “*definitive instruction*” to trade Holding A and an “*illustrative instruction*” to buy Holding H. He says SW ought to offer him the opportunity to agree redress based on an ‘illustrative instruction’ and he can decide if he wants to or not.

In addition he doesn’t see why the 14 November 2022 trades are relevant to whether he chose to further trade in these equities or not.

Mr T says SW failed to complete the trade involving Holding A and so that is what the loss calculation ought to address. He says the Holding H trade was merely illustrative and put to repair the damage he thinks he suffered by the Holding A trade not completing. Mr T says there have been other trades where definitive instructions and illustrative transactions have been provided by him.

He is dissatisfied as he says SW won’t tell him what needs to be done when they fail to follow a definitive instruction. He wants me to require SW to be clearer in their procedures on this. And he has referred to wanting SW to respond to him sending an email with an illustrative transaction within an hour.

Mr T has let me know SW have told him recently the platform he is using “*is not designed to support regular trading as you would on a trading platform... it is designed to administer your pension pot which is usually invested in long term investments. Having the ability to trade shares is an essential service we provide but not for the intention of live trading and as such has resulted in difficulties addressing any errors. I understand this is frustrating and we will always look to put you in the right position if something does go wrong such as a failed trade as a direct result of a system issue but any issues that arise as a result of using the platform in a way it's not built to be used won't be addressed in the way we have previously as we've made you aware*”.

Mr T thinks this is at odds with a comment I made in my provisional decision. In addition Mr T thinks the compensation doesn’t adequately reflect his time and stress.

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.

I have not changed my thinking from that set out in my provisional decision. I am upholding Mr T’s complaint in part.

Mr T has provided detailed submissions to SW and this Service. Given the relatively informal nature of this Service as an alternative to the courts, I mean no discourtesy by not including everything in detail in my decision. I am not required to do so, but I want to assure the parties I have read everything provided with care and taken everything provided into account.

In reaching my decision, it is a matter for me to conclude whether I have enough information and whilst I am required to take into account any relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time, ultimately, I make my decision on what is fair and reasonable in all the circumstances.

Where the evidence provided in a complaint is incomplete, inconclusive, or contradictory, I reach my conclusions on the balance of probabilities, that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

SW acknowledged that some things did go wrong in respect of the service provided to Mr T. SW calculated and offered redress in respect of where they said Mr T had been caused loss when it came to the trades he wanted to make. SW also offered a sum of £350 to reflect his distress and inconvenience.

I previously set out that I understood all the sums offered in the letter of 22 December 2022 have been paid to Mr T. And I have not been corrected on this.

Mr T confirmed that the issue that remained for this service to decide was the approach used by SW to calculate whether Mr T experienced any loss when it came to the failed/ intended trades on 14 November 2022.

When looking at a loss calculation the starting point here has been for me to aim to put Mr T in as close to the position he ought to be in, had things proceeded as they ought to have done.

SW told us Mr T had instructed them that he had intended to use the funds derived from the Holding A trade to buy units in Holding H. As such their approach had been to use the prices on 14 November 2022, the date Mr T had instructed the trades and to reflect what Mr T had intended to do on the day.

Mr T says that there had not been a final intention and instruction to buy units in Holding H. He refers to Holding H as being an 'illustrative transaction'. In addition he told us that SW's approach is flawed and inconsistent with the approach used by SW when they have considered other delayed sales.

As I indicated previously, SW concluded they ought to complete a loss calculation exercise here in respect of what happened on 14 November 2022. I don't think this was wrong.

Nor do I consider SW's approach here, in concluding Mr T intended to use the proceeds of the buy and sell of Holding A to buy units in Holding H was flawed or unreasonable. This approach seeks to look at what ought to have happened had there not been a problem with the trades on the day. In other words it seeks to use SW's understanding of Mr T's instruction and intention as a starting point, which I consider to be a fair approach. And I think this was Mr T's intention. Having now seen the precise words of Mr T's email of 15 November 2022 I have not changed my thinking. I appreciate Mr T did not apparently try to place a purchase in Holding H on 14 November 2022 (after the trade involving Holding A had failed). So it is possible Mr T might not have done that if the trade involving Holding A had not failed.

But I think it's more likely than not, this is what Mr T intended to do and would have done, had the Holding A trade successfully completed. I don't consider the language used by Mr T on 15 November 2022 ought to be characterised as only referring to Holding H for illustrative

purposes. Mr T communicated to SW contemporaneously that this was what he had been intending to do and I don't think it is unreasonable for this to be understood as his intention.

I have seen here SW are using the best price for the Holding A units that Mr T could have achieved on the day, and this does not seem unfair. And using the purchase price for the Holding H units on 14 November 2022 to assess the number of units he would have been in a position to purchase, is not unreasonable as part of SW's proposed loss calculation exercise.

In considering the appropriate date for assessing the value of the 297 units for comparison with 14 November 2022 when it comes to the loss calculation I reflected on various approaches.

Here there was reference to Mr T seeking to buy units in Holding H shortly after the trades on 14 November 2022 failed to proceed. As such I wanted to understand more about this. I also wanted to understand whether SW ought to have used the April 2023 date for the value comparison as part of the loss calculation.

Given the regularity with which it was suggested Mr T traded, I concluded there was an alternative approach available here which I think is preferable based on the facts of this case. I have reflected on what I have been told by SW about Mr T's trades involving Holding H from November 2022 until January 2023 and that he continues to have some Holding H holding. This has not been disputed.

As such it is reasonable to adjust the loss calculation exercise originally proposed by SW. This is because it is reasonable here to take into account the likelihood Mr T would have traded at least some of his Holding H units if he had purchased them on 14 November 2022 (as I think it's likely he would have done had the trades completed on that date), before 11 April 2023.

When it comes to considering dates for trading, in particular for someone such as Mr T who trades regularly, it is not possible to say exactly what he would have done. This does not mean there might not be other approaches that might also be fair and reasonable. I also acknowledge it can be hard not to be influenced by hindsight when considering what ought to have happened and in respect of trading. But I am comfortable my approach is reasonable in the circumstances of this complaint.

This approach is fair because it takes into account what I consider were Mr T's intentions on 14 November 2022. He wanted to trade Holding A and use the proceeds to buy units in Holding H. And it takes account of the fact he went ahead to both purchase and sell units in Holding H over the next couple of months, and also that he continued to hold units in Holding H at the time SW completed their loss calculation (and I am told he continues to do so).

I am not persuaded it would be appropriate for Mr T to be allowed to choose whether he wants the loss calculation completed using Holding H as an intended trade or not here. I am satisfied the approach I am requiring reflects the evidence and is a reasonable approach to putting Mr T as close to the position he ought to be in, so far as is possible.

Mr T doesn't think other trades and any holding of Holding H are relevant to this complaint. However I have considered it appropriate here to take into account in general terms Mr T's other trades with Holding H around the time, to conclude it is likely Mr H would have sold part of such a holding prior to 11 April 2023, and for the calculation to take account of such a likelihood.

I acknowledge I haven't seen anything that makes me think here SW specifically concluded Mr H would have held on to Holding H units until April 2022. I think they simply came to complete their loss assessment at that time. As such I think the April 2022 date was reached without the benefit of hindsight and might be considered in other circumstances to be a fair approach.

Putting things right

What SW must do

If Mr T accepts my decision, SW will need to complete the following loss calculation and pay any sums due to Mr T in the way set out.

This approach aims to put Mr T as closely as possible to the position he would be in if the trades I have found he wanted to make on 14 November 2022 had completed.

When it comes to the loss calculation it is hard to say here what Mr T would have done after 14 November 2022. In reaching my decision I have needed to consider what is more likely to have happened. As such there might not be one single reasonable approach. However I am satisfied, having taken everything into account the approach is fair and a reasonable assessment in the circumstances as to whether Mr T is more likely than not to have experienced a loss and be in a worse position than he ought to be.

I accept that on 14 November 2022 Mr T ought to have been in the position of being able to purchase 297 units in Holding H at a cost of £1000.30 (**Sum A**). This being the relevant proceeds of the Holding A trade that ought to have completed.

In other words, the £1018.46 sum that would have been realized from the Holding A sale minus the deductions for a dealing charge of £9.95 and stamp duty of £5.00 and the sum of £3.21 that SW said would have remained.

- SW are to calculate the value of 149 Holding H units on 10 January 2023 (**Sum B**) without any dealing charge or stamp duty deduction, and
- the value of 148 Holding H units on 11 April 2023 (**Sum C**) without any dealing charge or stamp duty deduction.
- SW must then add together Sum B and Sum C. The total is to be **Sum D**.
- SW should then compare Sum A with Sum D. If Sum A is higher then Mr T has not suffered a loss as a consequence of the trades not proceeding on 14 November 2023. If Sum D is higher Mr T has suffered a loss as a consequence of the trades not proceeding on 14 November 2023. The difference between Sums A and D is the sum to be used to represent any loss.
- If Mr T is established to have suffered a loss, the difference between Sums A and D is to be paid to Mr T adding 8% interest simple a year to this figure up to the date of settlement.

This is to represent his loss of use. I considered whether it was more appropriate to set the rate of interest to reflect the performance of Holding H or a benchmark. But given the likely level of any sum of loss I did not consider this necessary or proportionate.

Distress and inconvenience

SW increased their offer to reflect Mr T's distress and inconvenience to a total of £350 once his complaint was referred to this Service. Taking everything into account I think this offer

was fair and I don't require them to pay Mr T any further sum here. SW undertook to repay losses experienced by Mr T as a consequence of the issues he originally complained about, and they explained in their response letters of December 2022 and March 2023 what that meant.

I think the sum of £350 sufficiently reflects that Mr T experienced problems on more than one occasion and that this caused him clear frustration and inconvenience.

I appreciate Mr T thinks the award ought to be increased. But I consider the sum offered here was fair in all the circumstances. I have no doubt Mr T has given some time to his complaint however this Service generally does not approach such awards looking at hourly rates for time spent on a complaint, and I think SW's offer took into account this was more than a one-off problem. We have more information available on how we approach such awards on our website.

I previously explained that it is not unusual for businesses to consider various complaint points and make a holistic award to reflect the overall impact and taking more than one complaint point or issue into account. I am satisfied here that SW's approach was reasonable.

Further matters

I previously set out that I had seen what was said about Mr T using the plan for regular and daily trading, and that this was said to be unusual and not what this plan was designed to do. And I commented it is more usual to see customer's choosing to use a specific trading account for regular and daily trading.

I didn't consider this was a matter being complained about and I don't consider I have been required to make any finding on this. I commented previously that I hadn't seen anything that made me think this had been something Mr T was precluded from doing with his GSIPP, and as such that he was doing anything he ought not to be, nor that he was behaving unreasonably when it came to instructing trades. I was able to make that comment because SW had not said it was something Mr T was precluded from doing and they didn't dispute that at the time he was acting in a way he ought not to, albeit they thought this unusual use was causing him problems with completing trades and when it came sorting out problems. I explained none of these matters impacted on anything I needed to decide.

Mr T wants me to consider whether SW's recent email to him about his use of the GSIPP to trade and how they intend to approach redress in the future, is at odds with what I said in my provisional decision. I don't consider this is a matter relevant to the issues I have needed to decide on the complaint, and as such I am not making any finding on this. My initial thinking is that I don't consider it is at odds with what I said in my provisional decision. SW appear to have mainly repeated what they had said before. And that most people who want to trade as Mr T does, use a trading account, as this GSIPP is not set up for this intended purpose. I don't intend to comment on what SW have said about how they will approach any further claims and complaints made by Mr T. This isn't part of this complaint. Nor am I commenting on SW's wider procedures and approach when it comes to what ought to happen to complete a trade or if a trade does not complete or SW's approach to loss calculations. I don't consider these are matters for me to decide.

My role is to decide the individual complaint that is referred to me, on the individual facts and circumstances as they pertain to a case.

As such I appreciate Mr T says there have been other failed trades where he has referred to 'illustrative transactions'. And that SW say they are concerned if this decision intends to say

a customer can decide how loss is approach. But I have not needed to consider other failed trades to decide what it is fair for SW to do here. Nor does my decision determine or intend to determine how SW will approach any other claims for loss. I have considered only the case that was referred to me, on its own facts.

I have seen Mr T wants to know how my decision can be reconsidered. A final decision on a complaint is the last part in our process. It is a matter for Mr T to accept or reject my decision. If he accepts it, it is binding on both parties as a resolution to this complaint. Where a final decision is accepted, it is unlikely Mr T would be able to pursue SW in court for the same complaint. Alternatively Mr T can choose to reject it, and it will not be binding, and it would be a matter for him if he wanted to consider pursuing his complaint elsewhere.

If either side is unhappy with the decision, they can't appeal an Ombudsman's final decision to another ombudsman. A party also can't go to court to appeal the Ombudsman's decision just because they disagree with it.

However, we're a public body and we can be judicially reviewed. A judicial review usually focuses on the process an Ombudsman has used to make their decision, not on the facts and evidence of the dispute itself. We usually think a party would probably want to get legal advice before starting judicial review proceedings. There is more information available on these areas and about our service online.

My final decision

For the reasons set out above I uphold Mr T's complaint about Scottish Widows Limited in part. On being informed of acceptance of my decision by Mr T, SW will need to complete the loss assessment calculation set out above and pay any sum due to Mr T.

In addition SW will need to pay Mr T the sum of £350 as they previously offered to reflect his distress and inconvenience, if this sum has not already been paid to him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 23 April 2024.

Louise Wilson
Ombudsman