

The complaint

Mr S complains that Scottish Widows Limited (SWL) delayed transferring his pension fund with them to another provider so that he could purchase an annuity.

What happened

The history leading up to this complaint is well known to the parties and has been clearly set out in the investigator's assessment, which was accepted by both Mr S and SWL. So I will not recount here the entire sequence of events leading to this complaint.

In summary, Mr S sought to take benefits from his pension and emailed SWL on 30 June 2023 to let them know he'd like to start receiving a lifetime annuity as of 1 September 2023. Mr S received an annuity quote from another provider (who I will refer to here as 'B'), dated 23 July 2023 showing he'd receive an annuity of around £9,644 each year.

Mr S used a third party to assist in finding the best annuity on the market and they contacted SWL on 1 August 2023. SWL provided them with information on Mr S's policy the next day. On 3 September 2023 a transfer request was received by SWL through the Origo system. This was not processed by SWL. There was considerable correspondence between SWL and Mr S following this ultimately resulting in Mr S complaining to SWL 6 October 2023.

The transfer was eventually processed on 7 December 2023 and the funds received by the annuity provider, B, on 12 December 2023.

Also on 7 December 2023 SWL issued their final response to Mr S's complaint. They said they didn't think they were responsible for any delays in the transfer but did pay Mr S £150 for not promptly responding to him in November 2023.

Dissatisfied with this response, Mr S brought his complaint to this service for an independent assessment.

SWL then reviewed Mr S's complaint and concluded that they had in fact made an error which caused a delay. They said had they not made that mistake, they should have been able to process the transfer within ten working days, so by 18 September 2023. SWL then offered to contact B to complete a loss assessment to establish the value of the annuity Mr S should have been able to purchase if the transfer had been processed on 18 September 2023 instead of 7 December 2023. SWL also offered Mr S a further £1,050 to compensate for his non-financial loss, including the stress and inconvenience he experienced as a result of SWL's actions.

Originally, SWL told us they weren't willing to cover any missed annuity payments claiming that all the money had been transferred, so Mr S hadn't technically lost anything. But the investigator didn't agree and explained to SWL our standard redress methodology in these circumstances, which takes into account past and future loss. Following this SWL agreed to calculate redress on the basis proposed by the investigator.

Mr S also agreed to the investigator's redress proposal and since both parties agreed to resolve the complaint as set out by the investigator, the complaint closed on 19 March 2024.

However, several weeks later Mr S contacted the investigator to let him know that he had not heard from SWL. The investigator contacted SWL to chase this and on 18 April 2024 SWL responded that it had written to Mr S's solicitors for the relevant information to enable them to calculate and redress the past and future losses as set out by the investigator. And on 22 April 2024 SWL sent £1,050 to Mr S's bank account. Evidently SWL also sent Mr S emails by secure message, but Mr S has explained to them and to us multiple times that he isn't able to access these messages.

Despite repeated requests from our investigator and Mr S, SWL have not provided Mr S with all of the information he requested explaining the settlement to date. Furthermore, as far as this Service is aware, SWL have yet to fully settle things with Mr S as agreed. So, Mr S's complaint has been reopened and passed to me to review afresh and provide a final decision.

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.

Firstly, I should note that it is disappointing to see that SWL haven't provided Mr S with any meaningful information or settled the complaint, following confirmation that the matter could be resolved in the way proposed by the investigator and agreed to by both parties over three months ago.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

Having done so, I'm upholding Mr S's complaint. I won't comment here on everything that occurred while Mr S sought to transfer his pension benefits to purchase an annuity, as both parties agreed with the investigator's assessment, and it doesn't appear that anything in his findings are still in dispute. But to confirm to both parties, I have looked at everything again, independently, and afresh, in order to decide if I'm in agreement with the investigator's findings, including the compensation and redress methodology proposed.

In its revised offer to Mr S, SWL acknowledged that they'd made an error when processing the Origo request. And but for this error, SWL said that they should have been able to process the transfer within ten working days, so by 18 September 2024.

I've thought about this and like the investigator, I think ten working days is a reasonable timeframe for SWL to apply in these circumstances. I note that Mr S has also accepted this, and no alternate date has been suggested.

Since the transfer wasn't actually processed until 7 December 2023, SWL must ensure that Mr S is put into the position he should now be in but for SWL's mistake.

Putting things right

My aim in awarding fair compensation is to put Mr S into the position he would likely have been in had it not been for SWL's error. This means that the transfer would have been processed by SWL on 18 September 2024. Had this happened, Mr S may have received a different annuity rate and his annuity payments would have started sooner.

I have set out below the methodology SWL should use to calculate the loss for both elements.

Missed annuity payments – past loss

To calculate Mr S's past loss, SWL should determine:

- **A) Total of all the notional payments** which Mr S should have received from his pension, net of his marginal rate of tax, from the date of SWL's error up to the date of this decision
- **B) Total of all the actual payments** which Mr S has actually received from his pension, net of his marginal rate of tax, from the date of SWL's error up to the date of this decision
- **C) Past Loss = A – B.** If the answer is negative, there's a past gain and no redress is payable

In working out the net payments, SWL should assume that Mr S was a 20% rate taxpayer. Interest should be applied at 8% simple to the missed annuity payments up to the date of settlement to account for the time Mr S was deprived of this money.

Annuity amount – future loss

To conduct a loss assessment regarding the annuity amount Mr S ought to have received if the transfer had been processed on 18 September 2024, SWL should work out:

- **D) The notional gross pension per year** which Mr S should have been receiving from the date of this decision onwards
- **E) The actual gross pension per year** Mr S currently will receive from the date of this decision onwards
- **F) Future Gross Loss per year = D – E.** If the answer is negative, there's a future gain and no redress is payable.
- **G) SWL must then work out** what it would cost to replace any lost income in F) by buying an annuity on the open market with these features. It will need to refer to published annuity rate tables and get a quote from a competitive provider.
- **H) The purchase price of the annuity found in G) is Mr S's gross future loss.** This should be paid directly to Mr S as a lump sum after making a notional reduction to allow for income tax that would otherwise have been paid at his likely rate on the income in F – presumed to be 20%.

Additional redress

Furthermore, if SWL has not already done so, it should pay Mr S £1,200 in total for the distress and inconvenience he experienced as a result of SWL's mistake. Like the investigator, I think this is fair compensation for the substantial impact to Mr S's day-to-day life caused by SWL, particularly at a time when he was hoping to enjoy the start of his retirement.

If payment of compensation is not made within 28 days of SWL receiving Mr S's acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If SWL deducts income tax from the interest, it should tell Mr S how much has been taken off. SWL should give Mr S a tax

deduction certificate in respect of interest if Mr S asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

My final decision

For the reasons I've set out, I'm upholding Mr S's complaint. I now require Scottish Widows Limited to put matters right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 July 2024.

Jennifer Wood
Ombudsman