

## **The complaint**

Mr J's complaint is about the poor customer service that Scottish Widows Limited provided when he notified it of the death of his late father. Mr J is also unhappy that when he provided a list of potential beneficiaries Scottish Widows Limited paid 100% of the proceeds from the pension to his father's partner, which he doesn't think is appropriate.

## **what happened**

I issued my provisional decision on this complaint on 20 June 2024. The background and circumstances to the complaint and my provisional findings were set out in that decision. I've set out what it said below, and it forms part of this final decision.

### ***Provisional decision***

*Mr J's complaint was considered by one of our investigators. He sent his assessment of it to both parties on 25 January 2024. The background and circumstances to the complaint were set out in that assessment, and so I won't repeat them all again here. However in summary, Mr J's father sadly passed away in January 2023. Mr J contacted Scottish Widows on 19 April 2023 as he was executor and wanted to find out about how to redeem the pension.*

*Scottish Widows said it should then have started the bereavement claim process. But instead it incorrectly e-mailed Mr J a letter of authority to be completed. Mr J called for an update on 30 June 2023 as he hadn't heard anything since April 2023. Scottish Widows sent Mr J a letter on 3 July 2023 explaining the claim process. It set out that it was a four-stage process of notification, identifying potential beneficiaries, beneficiary nomination and options and settlement. It said it was at the second stage of the process – identifying potential beneficiaries. Mr J completed a form identifying the potential beneficiaries as himself, his father's partner, his father's parents and his father's siblings.*

*Mr J didn't hear anything back from Scottish Widows and contacted it again on 18 July 2023. He again didn't receive a reply, so complained on 27 July 2023.*

*Scottish Widows responded to say it recognised it hadn't responded properly when Mr J had originally contacted it in April 2023. It sent Mr J £75 in compensation for this. It said as the policy fell outside of the Estate it could contact relevant beneficiaries which included unmarried partners who were financially dependent on the deceased. It said it had set a deadline for all the information to be returned to them by the beneficiaries.*

*Scottish Widows subsequently wrote to Mr J on 18 September 2023 saying it had exercised its discretion and paid out the pension. It subsequently told Mr J that even though Mr J was his father's only child and next of kin, it had paid the policy to his father's unmarried partner. It said it had to consider all the beneficiaries in accordance with the scheme's rules, and this included partners.*

*Mr J didn't think this was appropriate as he said the partner was short term and the decision had left out Mr J's family. Scottish Widows said Mr J's father could have avoided the problem if he had added an expression of wish to his policy.*

*Scottish Widows subsequently said its comment about the expression of wish was insensitive and it offered Mr J another £100 in compensation. However it didn't think it had made the wrong decision about who to pay the pension to. It said there was limited information it could disclose because of data protection issues. But that the person it had paid the claim to met its criteria, and it was satisfied with the documents it had received. So it wasn't going to change its decision.*

*Mr J didn't agree with Scottish Widows' response and referred the matter to us.*

*Our investigator explained that we didn't have any powers to override a discretionary decision, and we couldn't say who we thought a policy should have been paid to instead. However, we could tell a provider to make its decision again if we thought it had failed to take relevant evidence into account or considered something irrelevant. He explained this didn't necessarily mean however that it would come to a different decision.*

*The investigator ultimately said that he thought Scottish Widows had followed the pension scheme's rules when deciding where to pay the proceeds from the pension. And although the investigator recognised that Mr J thought Scottish Widows hadn't made the morally correct decision, Scottish Widows had the discretion to decide who to pay the benefits to. He said he thought Scottish Widows hadn't provided an acceptable level of customer service in how it handled the claim. But that the £175 it had paid Mr J for the errors it had made - not responding to Mr J in a timely manner and its call handler being insensitive - was fair in the particular circumstances.*

*Mr J didn't agree with the investigator's findings. He said he wasn't content with Scottish Widows' decision to pay 100% of the pension to his late father's relatively short-term partner, and not consider any of his legitimate family as a beneficiary. He said he wasn't asked about his financial situation and nor were his father's parents. He said his father's parents were in need financially as they'd had to have modifications done to their house due to having health issues.*

### ***What I've provisionally 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 explained by the investigator, Scottish Widows had the discretion to decide who the proceeds from the pension should be paid to. In carrying out its responsibilities Scottish Widows had to ensure that any discretionary decision was made properly and in line with the powers that it had been given.*

*Scottish Widows has confirmed that it didn't contact any of the other potential beneficiaries for information other than Mr J's father's partner prior to paying out the claim. It said the beneficiary form that was completed by Mr J said there was no spouse or dependents. So it then looked to nominate a financially dependent partner (if they were able to provide proof of dependency). It said although Mr J had subsequently said he'd covered payments post his father's death, these costs were normal costs paid by the executors, and Mr J's father's pension didn't form part of the Estate. So it wouldn't have considered Mr J's claim as that of a dependent even if he had provided the information prior to it paying out the claim.*

*I think the starting point is to consider the pension scheme's rules relating to where a member dies before the pension has started. I think the relevant parts of the rules are set out in Part 8 - rules 8.1 and 8.10.*

Rule 8.1 says, in summary, that if a member dies the scheme administrator may "...use the member's fund at its discretion... for the benefit of one or more of...", and the categories listed include a 'dependent' and 'any persons or individual referred to in rule 8.10'.

8.10 includes, amongst others,

- (c) The parents and grandparents of the member or the member's surviving spouse and any children and remoter issue of any of them
- (d) the member's dependents
- (f) the member's legal personal representative.

Scottish Widows firstly had a duty to check for dependents and for potential beneficiaries of the plan. Mr J provided a list.

My understanding is that Scottish Widows then obtained information from Mr J's father's partner and established that she was a dependent. It paid 100% of the policy proceeds to the partner. However it didn't initially obtain information from any of the other potential beneficiaries. The list provided by Mr J included others that fell within the categories provided for in 8.10.

I e-mailed Scottish Widows to say that my understanding was that the scheme's rules didn't give priority to any of the categories of potential beneficiaries. And that all categories of potential beneficiaries appeared to have had equal standing. I said if I was correct about that, I thought Scottish Widows ought to have obtained information from Mr J and the other potential beneficiaries to enable it to appropriately assess the weight of their claims.

I said in my view, in order for Scottish Widows to exercise its discretion appropriately, it needed to, amongst other things, take all relevant information into account. And not base a decision on irrelevant information. I said I accepted that Scottish Widows might ultimately reasonably decide that the partner's claim – through dependency - had the most weight. But I thought Scottish Widows needed to make appropriate enquiries and obtain the facts about the other claims in order to take all the relevant information into account, and make a reasonably informed decision/exercise its discretion appropriately.

Scottish Widows replied to say that although the scheme's rules didn't set an order of precedence for potential beneficiaries, it had put in place an internal procedure and structure to its decision-making process - the 'discretion principles'. It said this was a business decision to ensure both fairness and consistency of approach to nominating beneficiaries in its capacity as Discretionary Trustees. It said its approach put a high emphasis on those who were financially dependent on a policyholder prior to their passing, and were therefore more likely to be impacted or disadvantaged long term due to the bereavement.

Scottish Widows said whilst it would also give adequate opportunity for all potential beneficiaries to evidence financial dependency, it didn't consider it responsible or fair to those nominated and awaiting settlement of the death benefits to delay this indefinitely whilst awaiting additional evidence from other parties who may be dissatisfied with its discretionary decision.

Scottish Widows said the beneficiaries form had specific sections where the various potential beneficiaries' details could be entered, including a specific separate section for "dependants". The form provided guidance around its classification of a dependant. And when Mr J completed the form he didn't indicate anyone was a dependent. It subsequently identified that Mr J's father's partner may have been a dependent because she had the same address. And the partner had then provided documentation to satisfy it she was a dependent.

*Scottish Widows' exercise of its discretionary power can be challenged if, amongst other things, there is evidence that it failed to take into account relevant, or took into account irrelevant, evidence. Whilst I've considered what Scottish Widows has said as set out above, I'm not currently persuaded it acted in a procedurally fair manner.*

*The rules of the scheme do not specify how the lump sums will be distributed amongst the beneficiaries upon death. No order of priority is given and decisions about that distribution will fall within Scottish Widows' discretion. I accept that Scottish Widows, when exercising its discretion, might give priority to those who were financially dependent on the member at the time of death.*

*However firstly, Scottish Widows has said if Mr J had considered himself a dependent he would have said so on the form. However this assumption clearly cannot apply to the other potential beneficiaries Mr J listed as Scottish Widows didn't contact them to provide information.*

*Scottish Widows has also said whilst it would give adequate opportunity for all potential beneficiaries to evidence financial dependency, it didn't consider it responsible or fair to delay payment indefinitely whilst awaiting additional evidence from other parties. However I can't see that it provided an adequate opportunity for the other potential beneficiaries to provide evidence of financial dependency here. And there wasn't a delay because it was waiting for information from the other potential beneficiaries – it hadn't requested any such information.*

*Secondly, I don't think such a policy (giving priority to those who were financially dependent) should be applied blindly. This could effectively prevent Scottish Widows from properly considering the exercise of its discretion in individual cases. Scottish Widows has said there was high emphasis on financial dependency, but it appears it was total emphasis. And whilst I agree dependents are 'more likely' to be impacted or disadvantaged, I don't think that means that will be the position in every case.*

*The decision should reflect a real exercise of discretion. Scottish Widows didn't gather information from the other potential beneficiaries to enable it to assess the merits of their claim – either as dependents, or in their own particular category of potential beneficiary. It's conceivable that although there were no other 'dependents' as defined, one or more of the other categories of potential beneficiary might nonetheless have a reasonable basis on which some of the payment ought to be made to them. So I think failing to obtain all relevant information could lead to an irrational or improper exercise of the discretion of who to pay.*

*To be clear, I am not finding that Scottish Widows' actual decision about who to pay the proceeds from the pension here was irrational or improper. But in my view it should reasonably have gathered information from all the potential beneficiaries on the list Mr J provided and that fell within the potential beneficiaries in the scheme's rules, before making a decision on distribution. That would have enabled the merits of each claim to be properly considered before exercising its discretion.*

*So in my opinion Scottish Widows failed to act in a procedurally fair manner. It didn't take sufficient steps to obtain relevant information to take into account and review the merits of the other claims before deciding to pay the proceeds of the pension to Mr J's father's partner.*

*It's not entirely clear to me whether Scottish Widows has paid Mr J the £175 compensation as I described above. But I think as well as the distress and inconvenience associated with Scottish Widows offering that compensation, its failure to process the claim in a procedurally*

*fair manner has also added additional distress to what is an already naturally distressing situation. I therefore intend to award Mr J another £350 for the distress and inconvenience I'm satisfied the matter has caused him.*

### **My provisional decision**

*My provisional decision is that Scottish Widows should reconsider its decision about the distribution of Mr J's late father's pension taking what I've said above into account. Scottish Widows should also pay Mr J £500 (in total) for the distress and inconvenience I'm satisfied the matter has caused him as I've outlined above.*

I asked Mr J and Scottish Widows Limited to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Scottish Widows said it was happy to increase the award for distress and inconvenience to £500. However it said it didn't agree with my conclusions in relation to the beneficiaries. It said it felt it had given the complainant enough time to provide it with sufficient evidence to change its decision, but it hadn't received anything to justify a change.

Scottish Widows said it wasn't viable for it to contact every person named on every beneficiary form. It said based on the information it had and the likelihood of finding a financial link, it approached the customers it thought could provide it with that information. And it didn't pay the claim until the evidence was provided. It said in this case it noted one of the beneficiaries had the same address as the policyholder, and therefore that was a good indication there may be financial dependency/interdependency.

Scottish Widows said if the provisional decision was accepted by Mr J it would go out to the other potential beneficiaries to explore the financial links and re-evaluate its decision. It said it would contact the relevant parties and provide them with a list of required evidence and give them a month to supply it. And if it didn't receive the required documents or it was insufficient, its original decision would remain in place.

Mr J said he accepted the provisional 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.

Having done so I've seen no reason to depart from the findings set out in my provisional decision.

For the reasons I explained in my provisional decision, in my opinion Scottish Widows failed to act in a procedurally fair manner in exercising its discretion given the terms and conditions of the pension and in the context of all the circumstances.

### **My final decision**

Accordingly, my final decision is that Scottish Widows should reconsider its decision about the distribution of Mr J's late father's pension taking what I've said above into account.

Scottish Widows should also pay Mr J £500 (in total) for the distress and inconvenience I'm satisfied the matter has caused him as outlined in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or

reject my decision before 14 August 2024.

David Ashley  
**Ombudsman**