DRN-4908850

The complaint

Mr W has complained that Scottish Widows Limited hasn't correctly adjusted his annuity income in line with the Retail Price Index (RPI), and as a result Mr W feels that he's being underpaid.

Mr W also considers that, in adjusting his payment revision date, Scottish Widows Limited is in breach of a legally binding contract which he established with it in 1992 when the annuity began.

What happened

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Mr W's annuity commenced on 1 January 1992 and was payable in monthly instalments. The income from the annuity would vary in line with the RPI and so, Mr W's income would adjust each year on the anniversary of his first payment date, 1 February.

However, within Mr W's original policy documentation, it incorrectly said that the adjustment/revision date would be 1 January. This was corrected by Scottish Widows in 2021 and a letter regarding the changes was issued to Mr W on 25 April 2021.

Following this, the adjustment date used for Mr W's annuity was 1 February and each year he would receive a letter from Scottish Widows confirming any changes to his annual pension.

On 24 January 2024, Scottish Widows issued Mr W a letter confirming his gross monthly amount had increased to £1,568.16.

Upon receipt of this letter, Mr W wrote to Scottish Widows on 31 January 2024 to query the RPI rate used, as he believed the RPI rate from September 2023 should have been used. A formal complaint was raised following this.

Scottish Widows issued its final response to Mr W's complaint on 28 March 2024. It compensated Mr W £100 for its poor service, but maintained that it had used the correct RPI rate.

Unhappy with this response, Mr W referred his complaint to this service.

Having considered the matter, our investigator didn't think that the complaint should be upheld. She said the following in summary:

- In terms of amending the adjustment date, although the annuity schedule which Mr W had forwarded set out 1 January as the adjustment date, Scottish Widows had confirmed that this was an error and that the adjustment date should have coincided with the first payment date – 1 February. This had been corrected since May/June 2021.

- Scottish Widows had confirmed the following RPI rates had been used: for January 2020, the RPI month was October 2019 at 2.1%; for January 2021 the RPI month was October 2020 at 1.3%; for February 2022, the RPI month was November 2021 at 7.1%; for February 2023, the RPI month was November 2022 at 14%; and for February 2024, the RPI month was November 2023 at 5.3%.

- Scottish Widows wrote to Mr W on 25 April 2021 advising him of the error in the adjustment month, but although Mr W had said that he hadn't received this, the letter had been correctly addressed and there was no reason to conclude that it had been fabricated by Scottish Widows.

- The terms of the annuity said the following:

  - *"At each anniversary of your first income date, the amount of income you get will vary based on the percentage change in RPI over a 12 month period. Each 12 month period will end three months before that anniversary.*

  - *For example, if your first income date is in May, we'll use the yearly percentage change in RPI to the month of February."*

- Therefore, even when the adjustment date was incorrectly set to 1 January, the RPI rate from September wouldn't ever have been used. As such, Scottish Widows hadn't made an error in using the RPI rate from November 2023, or for correcting the initial error and amending the adjustment date to 1 February.

- Scottish Widows had also undertaken a loss calculation to determine whether Mr W would have been better off had it used the correct adjustment date from the outset, but this had determined that Mr W was in fact better off due to the initial error.

- In terms of the distress and inconvenience caused to Mr W, the investigator noted that Mr W had initially raised the RPI query at the end of January 2024, and had needed to engage in various forms of communication to obtain a clear response to his queries. But taking into account the types of award this service might make in similar circumstances, she thought that the £100 offered by Scottish widows was appropriate.

Mr W disagreed, however, saying the following in summary:

- Scottish Widows' interpretation of what constitutes the relevant index figure was misleading. In the case of his annuity, it was the figure for the month which was three months before the month in which the revision date occurred. This was 1 January, as stated in his schedule, and as RPI is published at the end of each month, the closing figure for 30 September becomes the opening figure for 1 October. They are one and the same.

- Further, the payments which Mr W had actually received undermined Scottish Widows' claim that the review date had changed to 1 February. His uplift for 2024 had appeared in the payment made on 26 January 2024.

- Three months back from 1 January was 1 October, and clearly the RPI rate shown for September 2023 would have been the correct percentage adjustment.

- Mr W requested the terms and conditions from which the investigator had quoted, as there was nothing like that in his policy, he said.

In response, the investigator said that Scottish Widows had confirmed that the 1 January revision date, as quoted in Mr W's policy documentation, had been an error.

She further conveyed Scottish Widows' confirmation that letters confirming the payments which would be made (and any changes to the income) would be issued seven working days before the payment was made, i.e. when the payments was "raised". This was in order to give customer prior notice of income changes.

The investigator also included the terms and conditions to which she'd previously referred.

Mr W then commented as follows:

- The investigator hadn't commented on his query as to how Scottish Widows was able to invalidate the legally binding terms of the contract entered into due to an error of its own making.

- The investigator also hadn't responded to his point about the manner in which the relevant index figure was interpreted. He had clearly set out his view as to how this should be calculated.

- The terms and conditions which he'd been sent were from 2023 and he therefore couldn't see the relevance of these for his policy.

The investigator replied as follows:

- She was unaware as to why it had taken so long for Scottish Widows to correct the revision date, but she didn't think that it had acted unfairly in correcting that initial error.

- As to the correct interpretation of the relevant index figure, she said that Scottish Widows had confirmed the following within its terms and conditions (as quoted above). Scottish Widows had also confirmed that, when the revision date was 1 January, the relevant month for the RPI rate was October, not September.

The investigator also said that she'd requested the terms and conditions which would have applied to Mr W's policy.

Unfortunately the terms and conditions from 1992 weren't available to send to Mr W, but the investigator said that she'd therefore referred to the annuity schedule from 1992, which said the following:

"Relevant Index figure" on any revision date means the Retail Prices Index figure for the month three months before the month in which the Revision Date occurs."

Once the revision date was corrected, three months before February would be November, the investigator said, and even when it had previously been January, this would have meant that the relevant RPI month was October, not September as had been suggested by Mr W.

In response, Mr W said the following:

- He wished to see a copy of the loss calculation which Scottish Widows had said it had undertaken, and which he would expect to go back to January 1993, which was the date of the first revision. He would also like the calculations to show the annual annuity for each of the years in question and the effect of applying the revision for both January and February.

- Mr W also said that he would expect such calculations to be checked by the investigator.

- Mr W maintained that the relevant index figure for any given month would be that which was released at the end of the prior month. Mr W said that the figure for January 2024 had been 5.3%, but this referred to the 30 November 2023 figure, when it should have used the 30 September 2023 figure.

The investigator said that she'd requested the loss calculation, but noted that Scottish Widows had said the following:

"The letter from 2021 explains there was no loss due to the error, calculations were carried out comparing what was paid to what would have been paid had the correct escalation date (and therefore correct RPI rate) been used and he had received more under the incorrect date/rate than he would have under the correct ones."

She also said that this service didn't have actuarial expertise and so a thorough check of the calculations which would guarantee that there were no errors wouldn't be possible. But she also said that she had no reason to believe that Scottish Widows' calculation was incorrect and it had done what this service would expect of it in such a situation.

Mr W said that he would await the loss calculation with interest, but also said that his specific point about Scottish Widows using November 2023 for the revision date of January 2024 hadn't been addressed.

The investigator set out her view that she'd already addressed Mr W's point, but said that, as agreement couldn't be reached on the matter, it would be referred to an ombudsman for review.

The investigator then sent Mr W the loss assessment details as provided by Scottish widows. This said the following:

"Original Error

Our records show that your initial annuity amount was for £6,731.04 and was set up to escalate annually in line with the Retail Prices Index (RPI). The amount your income payments vary should be based on the percentage change in RPI over the 12-month period ending three months before the anniversary of your first payment. Your first payment was made on 01/02/1992. This means that your annuity should have been set up to escalate, in February each year, in line with the RPI rate of November.

However, an error meant your annuity was set up to escalate on the anniversary of the date your policy was set up which was 01/01/1992. This meant your policy escalated, incorrectly, in the January of each year, in line with the RPI rate of October.

Calculation Breakdown

To ensure you have not been disadvantaged, we calculated what your annuity amount would *have been had it varied each year using the November RPI rate. This was compared with the annuity amount you received, varying in line with the October RPI rate. Below is a comparison of the Annuity values. The Redress figure is simply the annuity calculated using the November rate, minus what you actually received in payment."*

Scottish Widows then provided a breakdown of the payments which Mr W would have received, had the correct revision date been used from the outset, compared to the payments he actually received. For the years since 1993, this demonstrated a financial benefit to Mr W, resulting in a total benefit by January 2021 of £1,157.

In response, however, Mr W said that he considered it implausible that each year would have demonstrated a financial benefit to him.

Mr W also said that there was variance between the change in the stated RPI rates and the change in the annuity amounts for the first five years beginning in 1993.

Mr W requested Scottish Widows' comments on this.

In response, Scottish Widows said that the RPI increase in Mr W's annuity was applied to the annuity value for the duration of the policy. It added that, although there may be years when the November RPI rate was higher than the October RPI rate, the annuity based upon the November rate would still be lower because the cumulative increase in RPI from the start of the annuity being paid was lower.

The investigator forward these comments to Mr W, but no further response was received.

However, as agreement couldn't be reached on the matter, its been referred to me for 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.

I've firstly considered the matter of Scottish Widows amending the payment revision date. Mr W has said that it shouldn't be able to do this, as it was contractually bound by the terms of the annuity which was originally established.

But whilst having regard for the law and any applicable rules and regulations, I must decide the outcome of the case on the basis of what would be fair and reasonable in all the circumstances. And in thinking about this, I don't think Scottish Widows has made changes to Mr W's annuity on a whim, but has rather sought to correct a mistake which was made at the outset.

As such, as it's not an arbitrary change to the terms of the policy with little or no foundation, but rather one which puts Mr W in the position he ought to have been, had the initial mistake not been made – and this in essence is the purpose of this service, to put correct mistakes or put matters right – I don't think that it's acted unfairly.

But what Scottish Widows did need to do, once it had realised the error, was ensure that Mr W hadn't been financially disadvantaged by the initial incorrect revision date. And so it undertook the loss calculation which has been forwarded to Mr W.

And having considered that calculation, along with Mr W's comments and Scottish Widows' response, I think what it's said is reasonable. The cumulative effect of the early higher payments has meant that, overall, Mr W has been better off due to the initial error in the payment revision date. I also note that Mr W hasn't provided further comments on Scottish Widows' explanation of its calculation.

I've then considered the payment revision date, and the comments from Mr W as to his view on which RPI figures should have been used in calculating the changes in his payments. Having done so, whilst I acknowledge Mr W's interpretation of the relevant index figure, this would effectively be using a figure which is more than three months before the payment revision date. The relevant month for a payment date of 1 January is the preceding October, i.e. the month which was three months before January – and I don't think this is in dispute.

But I don't think that Scottish Widows' interpretation is unreasonable. The RPI figure which might have been known as at 1 October (i.e. released in mid September), and which Mr W considers should be used, was in fact the RPI for August. So this would be an RPI figure five months before the payment revision date, rather than three months before, as set out by Scottish Widows. The RPI figure for each month is released around the middle of the following month. And so the RPI for October would in fact have been released in November. And this might reasonably explain the space of three months which is given between the payment revision date and the RPI month to be used. There needs to be time for the RPI to be released and translated into any change in the annuity.

Or to put it another way, it's not a case of the "known" RPI figure, as at a point three months before the payment revision date, being used. The RPI figure which is used is that for the month within which the point three months before the payment revision date fell – and in this case, for a (albeit incorrect) payment revision date in January, the point three months before that fell in October – and so the RPI rate for that month, published in November, was the one which would be used to calculate the payment revision.

And so it also follows that, once the revision date had been corrected, the RPI month for the February 2024 revision date would be November 2023 – and that this would be the figure which was published in mid December.

And as set out above, even if the revision date hadn't been corrected, the relevant month for a revision date of January 2024 would still have been October 2023 - not September 2023.

Overall, therefore, I don't think that Scottish Widows has acted unfairly here in seeking to correct its initial mistake, although my view is that it took a long time to do so. And had Mr W not been financially better off due to the mistake, then I might consider that an award higher than £100 in respect of the overall poor service Mr W has received would be warranted.

But given that Mr W has benefitted overall by just over £1,100 through the life of his annuity, along with the fact that Mr W has only more recently become aware of the mistake, as conveyed by Scottish Widows seeking to correct it, I don't think in this instance that a higher amount would be warranted.

My further view is that Scottish Widows has applied the correct methodology in applying its RPI changes, as defined by its provision that the RPI rate for the month three months prior to the month of the payment revision date should be used.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 12 November 2024.

Philip Miller
Ombudsman