

## The complaint

Mr B complains that Scottish Widows Limited (SW) failed to process the transfer of his personal pension plan (PPP) to purchase an annuity correctly resulting in him receiving a lower income for the rest of his life. He wants compensation for the losses incurred.

## What happened

Mr B was being advised by St James's Place (SJP) over purchasing an annuity with L&G using his existing PPPs with SJP and SW. L&G provided illustrations dated 24 October 2022, which guaranteed the annuity rate until 3 December 2022. The application form was signed on 16 November 2022 and emailed to L&G on 24 November 2022. The adviser called L&G to confirm timescales to secure the guaranteed rate as annuity rates had fallen since the illustration was generated. Funds would need to be with L&G by 2 December 2022 as 3 December was a Saturday. L&G said it was very busy but that it expected to be able to look at the application early the following week.

The adviser called SW to ask if the transfer could be made in time. SW initially didn't think it could. But said if L&G forwarded the application that day on the Origo transfer system, and added a note that it was urgent, it would send the payment by same day CHAPS rather than by BACS which would save several days. The adviser called L&G asking if a note could be added to Origo. L&G said it would email the administration team to request this but that there was no certainty the case could be prioritised.

L&G looked at the case over the weekend, but there was some outstanding information, which the adviser confirmed on 28 November 2022. L&G made the Origo request and SW picked it up for processing that day. The adviser called L&G for an update on 2 December 2022, saying SW had sent the funds by CHAPS on the 29 or 30 November 2022. L&G said Origo showed the funds were sent by BACS on 1 December 2022, meaning they wouldn't be received in time.

The adviser called SW who confirmed a BACS payment had been made. It said the funds had left the bank, so it was too late to stop this. It opened a complaint about not paying by CHAPS. L&G said if the funds didn't arrive that day, then a lower rate would apply for that part of the annuity, or it could send the money back to SW. The funds weren't received until 5 December 2022 and Mr B decided to proceed with the lower rate.

SW looked into the complaint and upheld it in part. It offered Mr B £100 in compensation for failing to complete the advisers request to make payment by CHAPS. But it said it wasn't responsible for the lost annuity rate because it had asked that funds be requested on 24 November, but they weren't until 28 November 2022. It said it had emailed its processing team to confirm a CHAPS payment had been authorised by Mr B. But L&G hadn't added any note to the Origo system referring to the deadline. Which *"was the most important step as it formed part of the actual process"* which would prompt the processing team to escalate the case and check for further instructions.

Mr B referred his complaint to our service and our investigator looked into it. He also complained to L&G. He said he was around £150 per month worse off in income terms for the rest of his life because of the errors made by both L&G and SW.

L&G looked into Mr B's complaint, but it didn't accept it. It said a CHAPS payment wasn't requested and that the application was submitted only a few days before the guarantee expired. Which was the main reason it wasn't completed in time.

Our investigator considered both complaints. She didn't uphold the SW complaint. She said that once it had received the application on 28 November 2022 it had processed it promptly. She said there was conflicting information about what L&G had been told was needed to be added to Origo, but that wasn't SW's fault.

Mr B disagreed, but as our investigator said the complaint about L&G should be upheld, he agreed the complaint about SW could be closed. Our investigator said L&G hadn't sent any message about the need to escalate the Origo request, so it should make good the annuity rate and pay any shortfall in income payments to date.

L&G didn't agree with our investigator and made a number of points.

Because L&G doesn't agree that complaint came to me to decide. I thought it was necessary for me to look at the evidence on the complaint about SW. And Mr B has now requested a decision be made on it.

### **My provisional decision**

I issued my first provision decision on 17 April 2024, I explained the reasons why I was planning to uphold the complaint in part. I said:

*I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint.*

*Having done so, I'm planning to uphold the complaint in part, but I don't think it is fair to hold SW responsible for the lost annuity rate. Unfortunately, it seems Mr B has incurred a significant loss in capital terms. In deciding what's fair, I've considered the evidence from SW and L&G and the limited evidence provided by the adviser. As when there has been a delay in setting up an annuity, it is necessary to consider the actions of all the parties involved.*

*At this stage it appears more could have been done to help secure the guarantee. But both SW and L&G were being asked to prioritise an application and operate outside their normal procedures at short notice. There was always a significant risk that the guarantee would be lost given a correct application wasn't with L&G until 28 November 2022, giving just five days to complete the exercise. SW worked on the Origo request promptly, but unfortunately the internal emails sent confirming the transfer should be paid by CHAPS weren't picked up on.*

*Our service doesn't regulate firms so I can't tell SW or any other business to change its processes and procedures. I can consider whether processes have resulted in unfair outcomes, but in doing so I need to be fair to both sides. Mr B was already SW's customer, with an existing file for his policy which might have allowed any notes and requests to be added. But SW says a specific prompt was required from L&G via additional notes on Origo. In the absence of these, it followed normal procedure and made payment by BACS.*

*I've listened to the telephone calls between SW's call centre and its processing team on 2 December 2022. The processing team immediately identifies that the lack of Origo notes*

*referring to the deadline meant the case wasn't escalated. So, this does appear to be its process to prioritise a request. That doesn't seem unreasonable, and it clearly wasn't at fault for there being no message on the Origo system. And it wasn't responsible for the very short time frame to set the annuity up.*

*I don't have details of what level of service the adviser was providing to Mr B or exactly why the application was submitted so close to the expiry of the guarantee. But typically managing the process is an important part of an adviser's role. SW and L&G had advised they were dealing with high volumes of work, and both were being asked to implement and execute special measures at short notice. L&G were remiss in not adding a note to Origo and SW might have picked up on its internal emails, but I'm surprised by the apparent lack of follow up from the adviser to check on progress.*

*When the adviser called L&G on 2 December 2022, he said SW had made a CHAPS on either the 29 or 30 November 2022. He then called SW, and said he'd "touched base" with it on 29 November 2022, where it confirmed it was paying by CHAPS. But SW has no record of the adviser requesting an update before 2 December 2022. If that isn't the case, then that might change my mind about this complaint. But had the adviser checked for progress on the 29 or 30 November or even as late as 1 December 2022, I think the problem could have been resolved.*

*At this stage I think there were errors that reduced the likelihood of funds being received in time. But the root cause does appear to be the very short timescale for the application to be processed. SW weren't responsible for that, but Mr B was its existing customer, and it took some action to prioritise his case. That created some expectation on Mr B's part. And he undoubtedly has been caused distress and inconvenience over what has happened. So, whilst I don't think it is reasonable to hold SW responsible for the lost annuity rate, it's fair that it should pay some compensation for the distress he's been caused.*

### **Putting things right**

*SW has already offered Mr B £100 in compensation, but in the circumstances here, I said I thought it was fair that this be increased to £250.*

I asked both parties to send me any further information or comments they would like me to consider.

### **Response to provisional decision**

SW said it accepted my provisional decision.

Mr B didn't accept my provisional decision. He said his complaint had never been about the standard service levels in place. But that both SW and L&G had agreed to a special process, with stipulated conditions but had failed to action this despite processing his application in good time and had failed to use the required payment method.

Mr B said the adviser had contacted SW on 29 November 2022 where the CHAPS payment was confirmed. And whilst there was no recording, there was a file note. He said with the CHAPS payment confirmed, there was no need for the adviser to subsequently contact SW or L&G. He said this evidence hadn't been requested and our service was simply believing what both SW and L&G said.

Following Mr B's comments, I asked the adviser for what evidence it held about this call. The adviser confirmed the time, date and number called from and person spoken to. This information was provided to SW, and I asked it to check for a record of this call. It did so and

located the call-in question which it said had been attached to the records of the previous day in error, for which it apologised. It provided a recording but said having reviewed the call, it didn't think it changed anything.

In view of this new evidence, I've decided to issue a second provisional decision to give both sides chance to make any further comments before I issue a final decision.

### **My second provisional decision**

I issued my second provision decision on 30 July 2024, I explained the reasons why I was planning to uphold the complaint. I said:

*I've reconsidered the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've decided to uphold the complaint as I think the primary cause of the annuity rate being lost was due to an error made by SW.*

*In my first provisional decision I said that the timeframe was short and meeting it was subject to certain conditions that needed to be successfully complied with by the three businesses involved, all of whom appear to have made some errors. That the application was worked on in time for the deadline to have otherwise been met is extremely frustrating for Mr B. I also said that if there was evidence that SW had confirmed payment was made by CHAPS on 29 November 2022, I may change my mind about the complaint.*

*SW had originally provided our service with a log of calls and other contacts made about Mr B's policy and had already provided recordings of those calls, but it hadn't logged a call on 29 November 2022. I asked for the recording to be sent to Mr B. He said the call confirmed payment had been made by CHAPS, which meant the missed annuity rate was caused by SW.*

*I've listened to the call myself several times. And it has changed my mind about what has happened here. I don't think the call handler actually states payment has been made by CHAPS but can understand why the adviser concluded it had been, particularly in the context that the call had been made. Initially the call handler reads back the notes from the earlier calls that refer to the need for a CHAPS payment and the cost of this being authorised.*

*The call handler says he is checking the Origo notes to established what has happened as Mr B's file was no longer visible on the system, which he said indicated the transfer had been processed and paid. It is confirmed the transfer has been completed. The call then moves on with the adviser asking if the funds sent from Mr B's other pension plan (with SJP) didn't reach L&G in time, could the SW payment be stopped. The call handler initially says the payment would be in transit and take a few days to clear, before correcting himself, that as it was a CHAPS (which would clear same day) it would therefore need to be refunded by L&G, if Mr B decided he didn't want to proceed with the annuity.*

*I've considered this carefully. The time allowed for both SW and L&G to process the application was very short, which neither firm was responsible for. SW said accommodations could be made, L&G that it would try, but then failed to add the requested note to Origo. The note the adviser requested L&G add to Origo was itself some way short of what SW had wanted, as it didn't refer to the actual deadline for the funds to reach L&G. And the adviser didn't check matters with L&G until the last working day of the deadline. So, several problems potentially had a role in the deadline being missed.*

*Given these circumstances I have thought carefully about whether there was a primary error which caused the annuity rate to be lost. And, having done so I think the outcome of the call of 29 November 2022 was primarily responsible.*

*The adviser was specifically calling to confirm payment, and once the call handler checked the notes, he knew a CHAPS was required. Crucially he said he was also checking the Origo notes which held details of how and when the payment had been made, which was by BACS not CHAPS. As the adviser then raised a separate concern about other funds missing the deadline with L&G, I think the urgency and importance of the actual payment method was clear. Taken together I think the adviser reasonably concluded payment had been made by CHAPS and the money would be received by L&G in good time. Had the actual payment method been confirmed then there might have been time to take corrective action or some other resolution to meet the deadline or otherwise secure the annuity income expected.*

*I do have some sympathy for SW's position, but it was made aware Mr B required a CHAPS payment and took some steps in its procedures around this. The call handler was able to readily see this on the system and ultimately, I think the failure to confirm the actual payment method used was the key factor in the annuity rate not being secured. Mr B appears to have suffered losses as a consequence and I think it is reasonable that he should be compensated for that, so it's fair that the complaint be upheld.*

### **Putting things right**

*I said my aim in awarding compensation was to put Mr B as closely back into the position he should have been in, but for the errors made. I set out how I thought SW should pay Mr B the difference between the income he had received and what he should have received with interest added at 8% per year simple. I also set out how it should liaise with L&G and either arrange for an increased annuity income to be paid going forward or for it to calculate the capital value of the income shortfall and to pay this as a lump sum to Mr B after an allowance for tax. I also said I thought it should pay him a further £150 compensation to give £250 in total for the distress and inconvenience he'd been caused.*

I asked that both parties send me any further comments or evidence by 13 August 2024.

### **Response to my second provisional decision**

Mr B said he accepted my provisional decision and asked if I upheld his complaint would SW contact him directly over the compensation and what sort of timeframe could be expected.

SW said having listened again to the telephone call recording of 29 November 2022, it also agreed with my provisional decision and was happy to liaise with L&G to settle the complaint.

### **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 decided to uphold the complaint.

As explained in my provisional decisions there were several problems and errors that jeopardised the deadline for the funds to reach L&G from being met. Ultimately, I think the main error was the failure to confirm the actual payment method used during the telephone call on 29 November 2022. That means SW hasn't treated Mr B fairly, as it now accepts.

The consequence of this error was that the annuity rate and income secured with the transfer value from SW was lower than it should have been once the guaranteed date was missed. As Mr B has noted this will have a financial impact on him for the rest of his life and it's fair that he be compensated for this. I've set out how that should be done below.

When our service awards compensation requiring loss calculations, we require the business to complete these and provide a copy of the calculations in a simple form for the consumer. So, SW will contact Mr B directly over this. As it will also need to liaise with L&G in respect of this, it isn't completely in control of the timeframe. However, the remedy I have set out below runs to the date of settlement plus interest in terms of past losses to ensure Mr B is fully compensated.

### **Putting things right**

My aim in awarding compensation is to put Mr B as closely back into the position he should have been in, but for the errors made.

### **Past payment loss**

SW must pay Mr B the difference between the net annuity income he should have received, and what he has actually received, until the date of settlement. This must include 8% per year simple interest from the date each payment should have been made.

In working out the net payments, SW should assume that Mr B was a 20% rate taxpayer.

If SW considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. It should also give a certificate showing this if Mr B asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **Future payment loss**

SW should liaise with L&G and arrange for Mr B's existing annuity to be increased to the level it would have been had the quotation guaranteed until 3 December 2022 been secured.

If L&G are unable to do this SW must arrange for a new annuity with the same features for the difference to be set up. Or it may work out the current cost of buying an annuity on the open market with the same features and pay this as a lump sum to Mr B. SW will need to refer to published annuity rate tables and get a quote from a competitive provider.

To ensure the right amount of compensation is paid if a lump sum payment is to be made to Mr B directly, a notional reduction should be made to allow for income tax that would otherwise have been paid at his likely rate on the income, of 20%. This isn't a payment of tax and Mr B won't be able to reclaim anything from HMRC.

SW must provide Mr B with a simple calculation of how it arrived at the figures.

I think Mr B has been caused distress and inconvenience by what has happened and in the delay in securing his pension benefits and SW must pay him a further £150 in compensation for this to give £250 in total.

### **My final decision**

For the reasons I've given above and in my provisional decisions, my final decision is that I uphold this complaint against Scottish Widows Limited.

I direct Scottish Widows Limited to calculate and pay the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 September 2024.

Nigel Bracken  
**Ombudsman**