DRN-4962147

The complaint

Mr R complained that Scottish Widows Limited (Scottish Widows) has charged him more than he expected for his pension policy.

He would like to be compensated for any financial loss he has suffered as a result.

What happened

I issued my provisional decision June 2024, the relevant parts of which are reproduced below and forms part of my decision:

Mr R took out a pension policy with Scottish Widows in 2005.
As part of the sale process, Scottish Widows sent Mr R a document dated 23 March 2005 which stated the fund charges on an annual basis were 0.65% of the total policy value. It also stated:

The charges cover the cost of commission, expenses, profit, and any other adjustments. Charges may change at any time

When Mr R received his annual statement in March 2023, he became aware that it stated that his total annual fund charges (TAFC) were stated to be 1.05% of the policy value. It also said:

Our charges can be varied if fair to do so. If we ever increase the Yearly Fund Charge, we will give you reasonable notice of at least 3 months.

Mr R subsequently complained to Scottish Widows on 24 May 2023. Scottish Widows responded on 26 May. It did not uphold his complaint and explained that:

The yearly fund charge is your Total Annual Fund Charge (TAFC) which consists of the Annual Management Charge (AMC) and any other expenses incurred to operate the fund. In total they amount to 1.05%.

The AMC on your fund is 1.000% but you have a discount applied of -.35 which leaves your AMC charge at 0 65%.

Mr R was unhappy with this response and queried it with Scottish Widows. Scottish Widows reconsidered it's previous response and agreed that it had provided Mr R with incorrect information in its earlier response to his complaint. It stated

Your policy is invested in the Scottish Widows Mixed Pension Series 2 Fund which has an overall AMC of 1.048%

- *The Total Annual Fund Charge (TAFC) is 0.698%*
- *The Standard Annual Management Charge (AMC) is 1%*
- *The policy does benefit from a 0.35% discount to the standard 1 % Annual Management Charge (AMC), as confirmed in the letter sent to you in 2007*

- *The policy is receiving the 0 35% discount on a monthly basis*
- *Your AMC Rebate is 0 35% so the overall AMC is 0 698% if you deduct 0.35% from 1.048%.*
- *The additional expenses are 0 048%*
- *The Total is 1 % - 0.35% + 0.048 = 0.698%*

The amount quoted on your annual statement of 1.05% for the Yearly Fund Charges has been confirmed as incorrect. Please accept our apologies for this error You have not been charged incorrectly since policy inception.

It also sent Mr R a cheque for £50 in respect of the distress and inconvenience this error had caused him.

Mr R remained unhappy with this response and brought his complaint to this service. He provided further information he had found from the time of sale which stated:

This policy will also benefit from a reduced annual fund management of 0.65% for Scottish Widows investment funds, compared to the standard charge of 1.00% per annum. Please note, a higher annual fund management charge will apply to external fund links. There will be no other policy fees.

Scottish Widows responded to say that the statement was technically correct, as Mr R was charged a 0.65% AMC, but that the additional 0.048% per annum charge was not a policy charge, but was an external expense from the fund management company.

Our investigator reviewed the evidence and concluded that Scottish Widows had not communicated the correct information to Mr R about the charges on his pension since its inception. As a result, they believed Scottish Widows should pay Mr R a further £150 in respect of his distress and inconvenience, which it did. They did not find that Scottish Widows had applied the fund charges incorrectly.

[Scottish Widows] *responded to the investigator's view, disagreeing with elements of it and asking for an Ombudsman to provide a final decision on this case. The case has now been passed to me to review all the evidence and make a final decision.*
Mr R replied to my provisional decision to dispute it. He made a number of points:

- He did not agree with my summary of his complaint as he felt that Scottish Widows were in breach of contract, rather than him being overcharged for his policy.

- He pointed out that I incorrectly stated that he had asked for the decision to be referred for an Ombudsman's decision.

- He reiterated his points related to his belief that that the rate shown in his original illustration from 2005 indicates that the 0.65% fund charge should cover all expenses, including external fund manager fees.

- He took issue that I felt that the errors to his statement only came to light in 2023 and were quickly corrected. He stated that his 2024 statement continued to show an error.

Scottish Widows did not reply to my provisional decision and so I will issue my final decision now.

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.

In my provisional decision, I stated:

Having reviewed all the evidence in this case, I have reached a different conclusion and do not intend to uphold this complaint. I think it is fair to explain my reasons to both Mr R and Scottish Widows and give them the chance to respond before I make my final decision. I shall explain my reasoning here.

Overall, I can see why Mr R believes that Scottish Widows have been charging him a higher level of fees on his pension than it should have done.

Looking at the evidence Mr R has provided, it appears clear that he was told when he first took out the policy that he would be charged an annual management fee of 1%, discounted to 0.65%. It was explained to him that:

The charges cover the cost of commission, expenses, profit and any other adjustments.
And he was also told that:
There will be no other policy fees.

Given these assurances, I find it reasonable that Mr R concluded that he was paying 0.65% of his policy value as an AMC. Scottish Widows had also told Mr R that it would give him three months' notice if his charges were to change. As he remained within the same fund throughout the life of his policy, the charges remained the same and he was never contacted by Scottish Widows.

Having said that, it's important to reflect on the role of this service. Firstly, I think it's important to reflect upon the role of this service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly. Where it has, it is our aim to ensure that the customer is compensated fairly.

This means that I must be satisfied that the business has made errors which have led to Mr R suffering a loss, and, on balance, I don't think that it has.

Having carefully reviewed the evidence, including the policy documents, I'm satisfied that Scottish Widows correctly applied an AMC of 0.65% to Mr R's policy when it was taken out, and it continued to charge this throughout the life of the policy. Scottish Widows did not make clear that in addition to its AMC, it would also pass on any external fund management charges. The documents I have seen from the time the policy was taken out comply with the regulations that applied in 2005, although I agree that these documents do not explicitly mention that external fund management fees are excluded from the figure of 0.65%. This gives rise to a potentially misleading impression that the discounted AMC of 0.65% is the only charge made to the policy.

Changes in regulation since 2005 have caused providers such as Scottish Widows to have to amend and clarify the information that it gives to its customers. The statement that Mr R received in 2023 was the result of some of these regulatory changes. The total charges on his policy were unchanged, but the external fund management charges that applied were made clear to him for the first time.

I'm satisfied that Scottish Widow's approach to passing on the external fund management charges to Mr R's policy was correct. As Mr R's policy remained invested in the same fund throughout its life, the fund management charges remained constant. If, however, Mr R had changed the investments held within his policy, I find it reasonable that any increase or decrease in the fund management charges should have been passed on.

As Scottish Widows have correctly applied the charges to Mr R's policy and complied with the regulations in force at the time, I can't see that it has done anything wrong in this regard.

Where Scottish Widows has made an error is in providing Mr R with an incorrect TAFC on his 2023 statement and also in providing incorrect information in its first response to Mr R's complaint. I've carefully considered the issue of how these errors have affected Mr R's view that he had been overcharged on his policy, and so could be entitled to a higher policy value than Scottish Widows had told him. On balance, as the errors only came to light in 2023 and were corrected quite quickly, I'm not sure that a compensatory award would be appropriate in the circumstances. These errors did, however, cause Mr R some distress and inconvenience and I note that Scottish Widows has paid him a total of £200 to reflect this. I consider this to be an appropriate level of payment in the circumstances, so won't be asking Scottish Widows to do anything more to resolve this complaint.

I have considered the points Mr R raised in his response to my provisional decision. Taking each in turn;

- I cannot comment on Mr R's belief that Scottish Widows are in breach of contract. This Service provides an independent arbitration service and is not a court of law, which would have to decide on any breach of contract. Consequently, I have considered his complaint as being in respect of the effect of potential overcharging by Scottish Widows which is the result of the fees being higher than he believed.

- I can only apologise for this error. It was indeed Scottish Widows that requested a final decision, not Mr R.

- I have carefully considered Mr R's points relating to the original illustration document. Although the illustration does indeed only explicitly mention *Fund Charges each Year* of 0.65%, it also states:

  If your plan is invested in an externally managed fund, there will also be charges made by the external fund manager.

  As Scottish Widows explained, the regulations related to how costs and charges are shown to customers have changed since 2005, but Mr R has always been charged an external fund management charge on his policy. Although this was not made explicit on the original illustration, this complied with the regulations in force at the time.

- I believed that Scottish Widows had corrected the mistake on his statements. If this has not yet happened, it should seek to remedy this as soon as possible.

Consequently, although I can appreciate Mr R's depth of feeling and belief that Scottish Widows has made a mistake which has resulted in him being overcharged for his policy since inception, I cannot agree with him and do not uphold his complaint.

My final decision

I do not uphold the complaint. My final decision is that Scottish Widows Limited should do no more than it has already offered to Mr R to resolve this complaint, including correcting the error on Mr R's statements if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 26 September 2024.

Bill Catchpole
Ombudsman