

The complaint

Mr P complains about how Scottish Widows Limited handled his pension transfer.

What happened

Mr P contacted Scottish Widows in advance to discuss a transfer he wanted to make out of his pension fund to another provider. He told Scottish Widows that he didn't want to transfer out of a specific fund within his pension but did want to transfer out of two other named funds. Scottish Widows told him that was possible.

On 13 May 2024, Scottish Widows emailed Mr P to confirm this in writing. It said it had also added a file note recording that when his transfer request was received, funds should only be taken from the 'SW North American' and the 'SW Fidelity American' funds and that '*under no circumstance*' were any funds to be disinvested from the 'SW Baillie Gifford North American Equity' fund.

When the transfer went ahead, contrary to Mr P's instructions, he learnt that the transfer had gone ahead and funds had been disinvested from the 'SW Baillie Gifford North American Equity' fund.

Mr P contacted Scottish Widows on 23 May 2024, to make a complaint.

On 6 June 2024, Scottish Widows issued its final response. It apologised for providing him with incorrect information about the terms and conditions of the policy and transferring out funds contrary to his instructions. It offered to pay him £400 compensation. Scottish Widows also offered to undo the transfer to put Mr P back into the position he would have been in prior to it providing him with incorrect information. I am told that Mr P declined the offer of reinstatement.

Mr P referred his complaint to our service.

Our investigator looked into Mr P's complaint considering the terms and conditions that applied at the time of transfer. He concluded that whilst Scottish Widows had misled Mr P into believing that he could select specific funds from which to transfer from, the terms and conditions did not provide him with that contractual entitlement.

The investigator therefore took the view that whilst Scottish Widows had done something wrong by giving him incorrect information, which misled Mr P into believing his transfer could go ahead in line with his instructions, Scottish Widows was not obliged to fulfil Mr P's instructions.

The investigator noted that Mr P had chosen not to undo the transfer when given this option by Scottish Widows.

The investigator considered that Scottish Widows' offer of £400 compensation for the distress and inconvenience caused to Mr P by the misinformation was fair and reasonable in the circumstances.

Mr P did not agree with our investigator's view and asked for his complaint to be referred to an ombudsman. So, his complaint comes to me for a decision.

Mr P says, in summary, he would have suffered further losses if he had agreed to Scottish Widows undoing the transaction. Mr P also said he has a health condition which impacts on his memory which meant that he was reliant on Scottish Widows providing him with correct information.

.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.

This service aims to put consumers back into the position, or as close to, as they otherwise would have been in, but for the error or omission made by the business.

Scottish Widows accepts it provided Mr P with incorrect information and upheld his complaint on this basis. It did not accept that Mr P was entitled to make the transfer in the manner he instructed it to. Therefore, it did not accept that it should compensate him for not adhering to those instructions.

I'll deal firstly with whether the terms and conditions of the policy entitled Mr P to transfer as instructed.

Did Scottish Widows have to transfer Mr P's funds as per his instructions?

Mr P brought a similar complaint to this service against Scottish Widows under reference number [REDACTED]. As part of that decision, it was explained how the Origo transfer process worked and that Scottish Widows' system didn't have the functionality to disinvest anyway other than proportionately.

I appreciate that Mr P may not recall that from memory, particularly given his health condition. He was however sent a written copy of the decision to refer to.

Mr P was also sent a written copy of the terms and conditions by Scottish Widows. The relevant terms and conditions that applied to Mr P's policy at the time of transfer were the 2021 ones. I have considered these in detail. I am told that Mr P has not been sent any other terms and conditions by Scottish Widows in the time he had this policy.

Term 11 covers transfers, it reads:

"11. SURRENDER OF POLICY – TRANSFER PAYMENT

11.1 Surrender of the policy

Subject to the Rules, you may at any time surrender in return for a transfer payment

- (a) all Arrangements,*
- (b) some Arrangements, or*
- (c) a specified proportion of all Arrangements,*

in respect of which you have not started on pension. Your request must be in a form acceptable to us.

We may reasonably decide to treat any request for (b) above as if it had been an

equivalent request for (c) and vice versa.

If it is not practically possible for us to apply your specified proportion, we will apply a proportion as close as possible to that specified.

If your request to surrender is in respect of (b) or (c), it is subject to our agreement (any refusal by us to agree must be reasonable). If we do not agree to your request we will inform you and we will not give effect to any part of it.

We will calculate the amount of the transfer payment ("the Transfer Value") in accordance with provision 11.2. It will become payable in accordance with the Rules on the day after we receive your written request, provided we have received all the documentation we reasonably require at our main administrative office, or on the day following as we reasonably choose, or on such later day as you request, provided you are then alive. However, in accordance with provision 2.8, we may delay the day on which the amount becomes payable.

11.2 Amount of transfer payment

At the date the Transfer Value becomes payable we will calculate the value of all the units allocated to the policy in respect of the Arrangements. This value of units is referred to as "The Total Value"

We will value units in the unit-linked funds at the appropriate bid prices for the day the amount becomes payable.

We will value any units in the unitised with-profits fund in accordance with provision 3.6, unless the date the Transfer Value becomes payable is the Selected Pension Date, in which case we will value them in accordance with provision 3.5.

The Transfer Value will be equal in value to the result of applying the proportion resulting from provision 11.1 to The Total Value."

11.3 Cancellation of units

When the Transfer Value becomes payable we will cancel the allocation of all or some of the units allocated to the policy in respect of all or some of the Arrangements. We will reasonably select the units to be cancelled.

The units being cancelled will be equal in value to the amount of the Transfer Value."

Scottish Widows explained to this service that in its view, essentially, this term enabled consumers to either withdraw the total value or make a partial surrender in two ways: by surrendering a specific number of complete arrangements or a designated percentage of all arrangements.

It said choosing to surrender a certain number of complete arrangements meant withdrawing amounts from each fund, as all arrangements are uniform and represent the overall investment distribution of the policy. Each arrangement allocates funds across various investments, so surrendering any arrangement involves pulling funds from all these investments.

It said alternatively, if the customer wished to withdraw a percentage of all arrangements, this action would involve disinvesting from all funds associated with the policy. For instance, if a customer decided to transfer 40% from each of 10 arrangements (which amounts to 40% of the policy's total value), the business will proceed to disinvest 40% of the value from each individual arrangement.

For example, if a policy consisting of 10 arrangements, each containing 1000 units, with

each arrangement allocated 50% to fund A, 30% to fund B, and 20% to fund C. To surrender 40% of each arrangement, Scottish Widows would need to sell 400 units per arrangement, composed of 200 units from fund A, 120 from fund B, and 80 from fund C.

Scottish Widows highlighted that term 11.3 permits Scottish Widows to select which units to surrender and there is no contractual right to withdraw from a specific fund.

It is not in dispute that Mr P was given wrong information prior to his transfer and the terms and conditions of the policy did not contractually oblige Scottish Widows to carry out the transfer in the manner Mr P had instructed it to. He was not however told by Scottish Widows that it would not be fulfilling his instructions prior to transfer, as term 11.1 required it to – *“If we do not agree to your request we will inform you and we will not give effect to any part of it.”*

I have noted that it would seem Mr P was informed that disinvestment could only occur proportionately in the earlier case this service dealt with. The plan's terms and conditions also make the transfer limitations clear and that Scottish Widows may reasonably exercise discretion in relation to the transfer. However, as the purpose of Mr P's call was to clarify the position, it would have been reasonable for him to expect Scottish Widows to provide him with accurate information.

Overall, I consider that Scottish Widow's offer to put this right is fair and reasonable. The £400 offered for the trouble and upset caused is in line with other awards made by this service.

Scottish Widows offered to undo the transfer. Mr P declined this option. This would have seen his pension plan restored to the position prior to the incorrect information. I consider this too was a fair offer in the circumstances.

I cannot reasonably require Scottish Widows to give effect to Mr P's instructions, and compensate him on this basis, as the terms and conditions of the policy didn't provide Mr P with this entitlement. To do so, would be requiring Scottish Widows to put him in a better position than his contractual entitlement.

I therefore leave Mr P to decide whether he wishes to now accept Scottish Widows offer of settlement.

My final decision

Scottish Widows Limited shall pay Mr P £400 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 February 2025.

Kim Parsons
Ombudsman