DRN-5030921

The complaint

Mr V complained Scottish Widows Limited (Scottish Widows) has not offered him adequate compensation for an investment error on his pension policy.

He would like Scottish Widows to increase its offer of compensation for this error.

What happened

I have reviewed all the evidence provided by both parties. I have not reproduced all of this in this decision but concentrated on what I believe to be the most relevant parts.

Mr V held two personal pensions with Scottish Widows, which he transferred to a new provider in 2005. On 7 December 2023, Scottish Widows wrote to inform him that it had discovered the plan value that had been transferred to the new provider in July 2005 was undervalued by £687.55.

It enclosed a cheque for £1,395.52 after tax as compensation for the original underpayment and interest at 8% per annum simple from 11 July 2005 to 12 December 2023. It also included details of how this amount had been calculated. Mr V replied on 18 December to reject the compensation offer. He felt that it undervalued the investment he had made with the transferred funds, which had grown by 286.4% in that period, which he calculated would equate to £1,969.14. He also asked for the redress to be paid into his SIPP account. He also raised a complaint about the error.

Scottish Widows replied on 18 January 2024. It said that it would increase the amount of compensation it paid to Mr V to reflect the investment growth his funds had actually experienced and was willing to transfer it directly to his SIPP account. It did, however, ask for evidence of the growth Mr V's investments had made, along with confirmation from the SIPP provider that it would accept a transfer into his pension.

Scottish Widows wrote again on 5 February 2024, upholding Mr V's complaint. It reperated the offer of increased compensation on receipt of the information it required. It also offered him £200 in respect of his distress and inconvenience.

Mr V wrote to Scotish Widows again on 7 February 2024. He again asked for the £1,969 to be paid into his SIPP, but did not provide any evidence of the growth in his investments or confirmation that his SIPP provider would accept a payment.

Scottish Widows and Mr V spoke on 9 April 2024. Mr V explained that he could not provide evidence of actual growth in his pension scheme for the compenmsation period, as he had moved providers, changed investments and taken tax free cash at various points over the years. Scottish Widows proposed using industry standard benchmarks for calculations.

Mr V wrote again on 10 April 2024. He asked for compensation at a rate of 8% per annum to be compound, rather than simple interest, or for the fund values for the funds that he had invested with Scottish Widows to be used. He requested compensation at the higher of the two amounts.

Scottish Widows responded to his complaint a second time on 19 April 2024. It said:

The benchmarks we have used are called Private Investors Income for medium risk and Private

Investors Balanced for high risk, we have considered the performance of this benchmark from 11 July 2005 until present. During this period the benchmark for a medium risk would show you as being due £1,333.08. The high-risk benchmark shows you would be due £1,635.81.

When we spoke today, I explained as a gesture of goodwill, we would be issuing you the higher amount of £1,635.81. As mentioned, before we will still need the details of your current pension provider to transfer these funds.

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

Our investigator reviewed the evidence and formed the view that in the absence of the evidence of actual growth enjoyed by Mr V's pension funds during the period in question, the use of the benchmark for calculations was correct and the approach that this service would recommend in these circumstances. They felt, however, that the period of compensation should be calculated up until the date of settlement of this complaint.

They also felt that the award of £200 in respect of distress and inconvenience was appropriate in the circumstances of the complaint.

Mr V did not agree with this view and so the complaint has been passed to me to make a final 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 have reached the same conclusion as our Investigator and uphold Mr V's complaint. I also agree that the redress Scottish Widows has offered him is appropriate in the circumstances of this complaint.

I will explain now how I have reached my conclusions.

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, we expect a business to fairly compensate a customer for any financial loss and distress and inconvenience they have suffered as a result.

It is also important to point out that the role of this service is as an informal alternative to court action. In this spirit, we have to arrive at a decision that we think, on balance, is fair and reasonable to both parties.

It's apparent in the circumstances of this complaint that there is no dispute about the fact that Scottish Widows made an error. This is clear to see as the trigger for this complaint was Scottish Widows writing to Mr V to draw his attention to the error it had made investing his pension benefits and making him an offer of compensation.

The key points I need to decide upon are, therefore, related to what would represent fair compensation to both Mr V and Scottish Widows.

Firstly, I must agree with Mr V that Scottish Widows was somewhat presumptive when it sent him a cheque for settlement along with the initial letter explaining the situation – I would have expected to see it make an offer of compensation together with options as to how it should be paid, for example, into an existing pension scheme or as a cash lump sum.

Moving on to look at the basis of Mr V's assertion that the compensation should be based upon the growth of the fund he said most of his pension benefits were transferred to, I would normally agree that this would be the most appropriate method of assessing his loss. I can also see that Scottish Widows has offered to use this method to calculate his compensation if he is able to provide evidence as to how he has invested his funds. In this case, however, I can see that the passage of time and Mr V's changes of SIPP provider over the years means that he is unable to provide this evidence.

Mr V has also suggested that the two funds he was invested in with Scottish Widows before he transferred his benefits away could be used to estimate his financial loss. I cannot agree with this approach, as there is no evidence to support that he invested in these funds once he had completed his transfer away and remained invested over the period.

As the evidence of what Mr V actually invested his funds in over the years is not available, Scottish Widows has looked at the returns that Mr V could have achieved looking at both the application of 8% per annum simple interest and two benchmark investment funds. It has offered him the highest of these three valuations.

I understand that Mr V does not agree with Scottish Widows taking this approach, but I have to agree with our investigator when they say that this is the approach this service would use when supporting evidence is either unavailable or insufficient. I should also note, however, that the benchmark this service would normally use when a consumer was willing to take some risk with their capital to achieve a higher level of reward is the medium risk benchmark Scottish Widows used, the FTSE UK Private Investors Income total return index.

Consequently, I can see that Scottish Widows has calculated that using this index would result in a lower level of compensation than using the alternative, higher risk measure. I would expect, however, Scottish Widows to honour it's earlier offer to Mr V to use this benchmark if he was to accept its settlement offer.

Given this, I think using a benchmark approach is fair and reasonable to both Mr V and Scottish Widows in the circumstances of this complaint.

In terms of the period that the loss calculation should cover, I also note our investigator's view that Scottish Widows should undertake the loss calculation to cover the period including this complaint and agree that this is a reasonable approach. Consequently, Scottish Widows should use the benchmark from 11 July 2005 when the policy was transferred to the date of settlement until the date of settlement.

I can also see that Scottish Widows has offered Mr V and additional payment of £200 in respect of the distress and inconvenience its error caused him. Once more, I agree with the investigator that this is a fair and reasonable payment and in line with the guidance offered by this service which is designed to ensure consistency in such payments across complaints.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr V as close as possible to the position he would probably now be in if the investment error hadn't occurred. It is not possible to say precisely how Mr V would have invested the additional funds, but I am satisfied that what I have set out below is fair and reasonable.

To compensate Mr V fairly, Scottish Widows :

- Compare the performance of Mr V's investments with that of the benchmark shown below.
- A separate calculation should be carried out for each investment. If the fair value is greater than the actual value, there is a loss. The losses should be combined and the total is the amount of compensation payable.
- Scottish Widows should also add any interest set out below to the compensation payable.
- If there is a loss, Scottish Widows should pay into Mr V's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Scottish Widows shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Scottish Widows is unable to pay the compensation into Mr V 's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr V won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr V's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr V is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr V would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- In addition, Scottish Widows should pay Mr V £200 for the distress and inconvenience caused.
- Provide the details of the calculation to Mr V in a clear, simple format.

Income tax may be payable on any interest paid. If Scottish Widows consider that it is required by HM Revenue & Customs to deduct income tax from that interest, Scottish Widows should tell Mr V how much it has taken off. Scottish Widows should also give Mr V a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From (Start date)	To (end date)	Additional Interest
Threadneedle Euro Select	No longer exists	FTSE UK Private Investors Income Total	11 July 2005 (date of transfer)	Date of settlement	N/A

		Return Index			
Newton UK Income	No longer exists	FTSE UK Private Investors Income Total Return Index	11 July 2005 (date of transfer)	Date of settlement	N/A

Actual value
This means the actual amount paid or payable from the investment at the end date.

Fair value
This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in. Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Scottish Widows total all those payments and deduct that figure at the end.

My final decision

For the reasons given above, I uphold Mr V's complaint.

Scottish Widows Limited should pay Mr V the sums calculated above, if it has not already done so.

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

Bill Catchpole
Ombudsman