DRN-5041280

The complaint

Mr C complains that Scottish Widows Limited (SWL) used the two pension funds he held with it to buy annuities after he'd told them he didn't want to purchase annuities.

What happened

Mr C had two with-profit pension policies with SWL.

SWL wrote to Mr C on 22 April 2020 about those policies. The letter was headed: "*DON'T LOSE THE CHOICE OVER WHAT TO DO WITH YOUR PENSION*". The letter explained that it was important the Mr C contacted it before his 75th birthday. And that if he didn't, SWL would automatically buy an annuity for him.

The letter went on to explain that Mr C should work out what he wanted to do with his pension, and then tell SWL "*in plenty of time before your 75th birthday*". It said if he did that, he'd be able to take advantage of the full range of options available.

SWL wrote to Mr C on 30 March 2021 with similar letters about his two policies.

SWL wrote to Mr C on 26 October 2021. This letter explained his options for his pensions. And again asked him to contact SWL. The letters also confirmed that if it didn't hear from Mr C before his 75th birthday, it would automatically buy an annuity for him. The letter stated that it may be possible for Mr C to delay choosing his retirement options if he transferred his policy to another provider. But that any such transfer would need to be completed before his 75th birthday.

SWL wrote to Mr C again on 21 January 2022 about his options. It again asked him to contact it. It said his 75th birthday was just a few weeks away so he needed to make a few choices. The letter told Mr C where he could find more information about his retirement options. And repeated that it would automatically buy an annuity for him if it didn't hear from him before his 75th birthday.

The letter stated the following:

You need to review your options and contact us before your 75th birthday. Under the terms of this policy we require you to choose a retirement option by age 75. That way you can take advantage of the full range of available options and don't miss out on taking your pension in the way that best suits your needs.

If we don't hear from you before your 75th birthday, we will automatically buy an annuity for you in accordance with the policy terms. This will give you a regular and guaranteed income for life but you will lose the opportunity to take tax-free cash or an alternative option which may better suit your needs. By missing out on the opportunity to shop around you might end up with a lower income as a better deal might be available elsewhere.

If you don't want to make a decision by age 75, you may be able to delay choosing a retirement option by transferring your policy to another provider. It can take several weeks to *conclude a transfer request and it would need to be completed no later than your 75th birthday.*

I understand that Mr C emailed SWL on 1 February 2022, but he didn't receive a response.

On 22 February 2022, Mr C called SWL. He hadn't yet reached his 75th birthday but it was imminent. He said he had with-profits policies. And that he knew he needed to do something, but he didn't want an annuity. Mr C said he'd like to leave his policies invested, but said this didn't seem to be an option. SWL told Mr C that for his policies, the maximum age he could leave them invested was 75. It said it had other policies within which he could keep the funds invested, but he'd have to take Tax-Free Cash (TFC), then move the rest of his funds to drawdown to access those policies. Mr C said: "*Well, I'm in trouble then, aren't I?*".

SWL apologised to Mr C for not having responded to his 1 February 2022 email. It then continued to discuss what Mr C wanted to do with his maturing funds. He repeated that he definitely didn't want an annuity. The call handler said he'd put a note on Mr C's policies that he didn't want his funds to be annuitised straight away. And offered to send Mr C pension summary letters. Mr C said: "*I will quickly look for somewhere else to put it*". The call handler then said he'd send an email about the other SWL policy that Mr C could use if he wanted to leave his funds invested. He said that could be set up by phone.

The call handler repeated that with SWL's other policies, Mr C would have to take TFC first, but that he could then leave the rest invested. Mr C said: "*That is fine. The main thing is I don't want an annuity*". He also said he didn't: "*fancy taking the Tax-Free Cash*", but that he would look into his options.

On 22 February 2022, after the call, SWL emailed Mr C with links to the policy it'd referred to. It also issued standard pension summary letters. These stated the following:

LEAVE IT FOR NOW

If you don't need to take your pension savings yet, you can leave it for now, keep it invested and make a decision when you're ready to retire. Remember to review your pension on a regular basis to make sure you won't lose any valuable guarantees that may only apply at your selected pension age.

SWL wrote to Mr C on 11 July 2023 about both of his policies. It said that as he'd not sent instructions about what he wanted to do with his pension benefits when he reached 75, it'd bought an annuity for him, in line with its terms and conditions. The letters stated that SWL needed Mr C's help to pay his pensions to him. And asked him to get in touch so it could start sending him payments.

Mr C complained to SWL on 23 July 2023 as he was unhappy SWL had purchased the annuities without reference to him. Mr C said he'd told SWL on 22 February 2022 that he didn't want annuities. He said he'd assumed his cash was safe. Mr C said he felt his original contract requiring annuities had been subsequently rendered null and void by changes in pension legislation.

Mr C wrote to SWL again on 26 March 2024, as it hadn't responded to his complaint.

SWL issued its final response to the complaint on 24 April 2024. It apologised for the service it'd provided. And offered Mr C £200 compensation for the distress and inconvenience caused, which he rejected.

SWL said it hadn't done anything wrong when it'd set up the annuities. It said it'd written to

Mr C in advance of his 75th birthday to explain his options. And that it'd confirmed these during the 22 February 2022 call. It also said Mr C needed to speak to its servicing team about his annuity. It provided contact details.

Mr C wasn't happy with this response. So he brought his complaint to this service. He felt he'd made his intentions clear to SWL. He also said he didn't know what type of annuity had been set up. Mr C said he wanted his cash, not an annuity.

Mr C said he'd expected some feedback from SWL after the call on 22 February 2022. And that although that never came, he'd assumed everything was OK. He also felt that SWL's communications before his 75th birthday hadn't been clear or personalised.

Our investigator asked SWL for details of the annuity it'd purchased for Mr C. It said that it'd set up a dummy annuity on standard terms. But that it needed to be shaped by Mr C to his requirements. It also needed payment instructions. It said that once it had this, it could backdate payments and issue letters. It again provided contact details for Mr C.

Our investigator issued his first view in June 2024. He felt that the letters SWL had sent before Mr C's 75th birthday had clearly confirmed that it would automatically buy an annuity if it didn't hear from him. And that SWL had confirmed during the 22 February 2022 call, when Mr C had said he didn't want an annuity, that he couldn't leave his pension as it was, so he'd need to make a decision. He therefore felt that SWL had provided sufficient information in a clear way about the automatic annuitisation process it would follow. He was also satisfied that SWL had acted in line with the terms and conditions of Mr C's policies.

Our investigator also felt that the £200 SWL had offered Mr C for not responding to his complaint was fair and reasonable.

Mr C didn't agree with our investigator. He felt SWL had misleading literature and that it should've contacted him immediately after 22 February 2022.

Mr C said that he'd contacted SWL to discuss his options. But had found out that he no longer had any. He also felt that his funds had decreased by 25% before being applied to annuities.

Our investigator asked SWL for its comments on Mr C's point about options no longer being available. It said that given he was now over age 77, an annuity was the only option. SWL also said that it had confirmed to Mr C in June 2024 that it could only offer an annuity. It also said it hadn't received a further complaint.

Mr C told this service that SWL's failure to act on his July 2023 letter had been damaging to him. He also made points including the following:

- Mr C said that while SWL had communicated with him that he needed to contact it before his 75th birthday or it would buy an annuity, it'd also told him he could leave his money with it after his 75th birthday. He said it'd even told him this in February 2022. He said he'd only found out "*late in the game*" that it wasn't possible for his policies to continue after his 75th birthday. He felt he'd met SWL's conditions as he had contacted it before his 75th birthday.

- Mr C said that after he'd told SWL in February 2022 that he didn't want annuities, he'd expected further communications from it. And that when he heard nothing, he'd assumed everything was OK. He said the next he heard from SWL was July 2023. He felt this was pivotal to his complaint. Mr C felt that if SWL had acted earlier, he wouldn't have lost out.

- Mr C felt that his policies' original terms and conditions, which required him to take an annuity at 75, must have changed with the law.

- He also felt that SWL hadn't considered his age and status. He felt it had a policy for vulnerable people.

SWL confirmed to this service that it had no obligation to follow up with Mr C after the 22 February 2022 call. It said this was because it'd already provided him with the information in letter form which it'd chased. It also reconfirmed that Mr C hadn't made any further separate complaints to it.

Our investigator issued a second view on the complaint in September 2024. He'd considered Mr C's points, but still didn't think the complaint should be upheld. Having listened to the 22 February 2022 call, he felt Mr C had understood that if he didn't want an annuity, he needed to take action to either enter into a drawdown arrangement with SWL or with an alternative provider. He also said that he hadn't seen any evidence that Mr C had made SWL aware of any vulnerabilities.

Our investigator felt that the call and the letters SWL had sent Mr C had left him in no doubt that it would set up an annuity for him if he did nothing. He also noted that when Mr C had written to SWL in July 2023, he was already over age 76. Therefore the only option available was to purchase an annuity.

Mr C didn't agree with our investigator. He felt that if SWL had responded to him in July 2023 he wouldn't have suffered a loss. He felt there'd been a window of two years to do whatever he liked with his pensions, but that SWL had caused this to be missed.

Mr C said he'd no idea that annuities would be bought after his call with SWL in February 2022. He said he'd expected his funds to remain in his pensions until SWL contacted him. And that when it didn't, he'd thought everything was OK.

SWL told this service that the options it'd referred to during recent calls with Mr C had been those to give shape to the annuities. It said it'd written to Mr C in June 2024 about this. It shared copies of those letters with this service. They stated that Mr C had yet to reply to SWL on this issue. They explained that the annuities had been set up to be payable monthly from March 2022 and that they were guaranteed for five years and life thereafter. The letters also asked Mr C to contact SWL within the next 30 days if he wanted to amend the annuity options that had been selected.

SWL told this service that its Legal, Risk, Group Tax and Product department had confirmed that the annuities couldn't be unwound as this would go against HMRC rules.

Mr C still didn't agree with our investigator. He felt that SWL had a fiduciary duty to act in his interest. And that it had failed in this regard.

As agreement couldn't be reached, the complaint has come to me for a 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.

Having done so, I'm not going to uphold it. I agree with our investigator that SWL took reasonable steps to make Mr C aware about what he needed to do in advance of his 75th birthday if he didn't want it to use his pension funds to buy annuities. I know this will be disappointing to Mr C. I'll explain the reasons for my decision.

Mr C said that SWL's communications had been unclear. So I first considered those communications.

Were SWL's communications unclear?

Mr C also said that he'd only found out "*late in the game*" that he couldn't continue his policies after his 75th birthday.

The evidence shows that SWL first wrote to Mr C about his upcoming 75th birthday and what that meant for his policies in April 2020. That letter explained what would happen and what he'd miss out on if he didn't contact SWL before his 75th birthday.

SWL didn't hear from Mr C. So it wrote to him again on 30 March 2021 with similar information. It also wrote to him on 26 October 2021 to explain his options, again asking him to contact it. And again explaining what would happen if he didn't. Mr C didn't reply.

I included an extract from SWL's 21 January 2022 letter to Mr C above as I consider this was clear how pivotal his 75th birthday was. I also note that the extract makes it clear that although it might've been possible for Mr C to delay his retirement option if he transferred his policies to another provider, that transfer would have to be completed before his 75th birthday.

I'm satisfied that this letter, and the other letters SWL sent Mr C before 22 February 2022, which I've referenced above, clearly and accurately stated what would happen if he hadn't provided SWL with alternative instruction before his 75th birthday.

While I acknowledge that Mr C felt that his policies' original terms and conditions must have changed when the government removed the requirement to annuitise by age 75, I'm also satisfied that these letters contained information that was in line with the current terms of Mr C's policies. SWL didn't have to change the policies' terms simply because the government had removed the requirement. It was entitled to retain the requirement for the type of policy Mr C had with it.

The only evidence I can find of SWL telling Mr C he could leave his money with it after his 75th birthday is during the call on 22 February 2022. But I'm satisfied that the call agent made it clear that Mr C would have to move his policies to different policies with it if he wanted to do that. Having listened to that call, I'm also satisfied that Mr C understood this point. I say this because he said: *I will quickly look for somewhere else to put it*".

SWL has confirmed to this service that the pension summary letters it sent Mr C on 22 February 2022 were standard documents which weren't tailored for customers approaching their 75th birthdays.

The letters therefore contained some information that wouldn't be relevant for Mr C after he'd gone past his 75th birthday. This included the "*LEAVE IT FOR NOW"* paragraph I've copied above.

Under the circumstances, I think it would've been helpful if the pension summary letters SWL sent to Mr C on 22 February 2022 had been tailored for him. But I consider that the letters SWL had sent on 22 April 2020, 30 March 2021, 26 October 2021 and 21 January 2022 had all been completely clear that Mr C had to take action by his 75th birthday. I'm also satisfied that the 22 February 2022 call made it clear that Mr C couldn't retain his existing policies if he wanted to keep his funds invested beyond 75.

Therefore I'm not persuaded that when Mr C received the 22 February 2022 pension summary statements, he could've reasonably expected that all the previous information he'd been given about having to make a decision by age 75 was incorrect. I think if he had felt that way, he would've called SWL to confirm.

Overall, I'm satisfied that SWL's communications were sufficiently clear that Mr C could reasonably have been expected to understand that it was up to him to instruct SWL about the retirement option he wanted to take before his 75th birthday. And that he didn't have the option of leaving his funds where they were after that.

I next considered the February 2022 call between Mr C and SWL.

The February 2022 call

Mr C made it clear to SWL during this call that he didn't want annuities. And he did this before his 75th birthday. He therefore felt that annuities wouldn't be bought on his behalf after that call. Instead, he expected his funds to remain in his pensions until SWL contacted him.

Mr C said that although SWL didn't contact him after that call, he'd assumed everything was OK. So he was shocked to hear in July 2023 that it'd used his funds to buy annuities against his wishes. He also felt that if SWL had acted earlier, he wouldn't have lost out. He felt that SWL's failure to act on his July 2023 letter had been damaging to him.

I've carefully listened to the February 2022 call between Mr C and SWL. Although I agree he explained he didn't want annuities, I'm satisfied that he understood that wasn't an option if he left his policies as they were with SWL. I think the call handler made it clear that for Mr C's existing policies, the maximum age he could leave them invested was 75. It's also evident that the call handler acknowledged that Mr C didn't want his funds to be annuitised straight away.

After Mr C had said, in respect of his funds: "*I will quickly look for somewhere else to put it*", the call handler said he'd send Mr C information about a SWL policy that he could use if he wanted to leave his funds invested. He also explained what would have to happen if Mr C wanted to move his funds to that policy. Mr C said he'd look into his options.

At no point did the call handler indicate that SWL would contact Mr C again. I'm also persuaded that the communications leading up to the February 2022 call made it clear that it was up to Mr C to take action.

Under the terms of the policies Mr C held with SWL, he was required to choose his retirement option by age 75. Instead, a little before his 75th birthday, Mr C told SWL that he didn't want to take an annuity. SWL then outlined his options for avoiding this, but he didn't take the steps outlined. Therefore although I agree that Mr C did make it clear that he didn't want annuities, I can't fairly say that SWL did anything wrong when it set them up. I say this because it had no other option under the terms of the policies he held with it.

While I acknowledge that Mr C felt that SWL's failure to act on his July 2023 letter had been damaging to him, I can't fairly agree. I say this because, although I can see that he considers there was a window between his 75th birthday and his 77th birthday to change his retirement options, I'm not persuaded that this is the case.

SWL has confirmed to this service that it does have a one-year window between ages 75 and 76 to rectify any outstanding issues. But that after a policyholder's 76th birthday its options are severely limited. It said that in July 2023, Mr C was several months past his 76th birthday. I'm therefore satisfied that it was already too late to stop the annuitisation well before Mr C contacted SWL in July 2023. Therefore I can't fairly say that SWL's late response to that letter has made any financial difference to Mr C. I say this because nothing would've been any different if it'd responded to that letter immediately.

I also considered the points Mr C has made about his vulnerability and about SWL's fiduciary duty to him.

SWL's responsibilities

Mr C said that SWL had a fiduciary duty to act in his best interest.

SWL is Mr C's pension provider and administrator. Its role is to provide information to its customers, so that they can make informed decisions about how they manage their pension funds, with or without a financial adviser.

SWL wasn't Mr C's financial adviser. It couldn't advise him about what to do with his pension funds when he told it he didn't want to buy annuities. But it could explain the options that were available to him and give him enough information for him to be able to make his own informed decision.

As I noted earlier, I consider that it did this. Not only did SWL send letters to Mr C which explained what he needed to do before his 75th birthday, but it also provided information about other places he could go for help. I'm not found any evidence that SWL failed in its responsibilities to Mr C.

Mr C also said that SWL hadn't considered his age and vulnerability. But I haven't seen any evidence that he ever told SWL he was vulnerable. And while it was inevitably aware of his age, I haven't seen any evidence that it treated him differently from how I would've expected it to treat him.

I have also noted Mr C's comments about an alleged fall in the value of his funds prior to their annuitisation. SWL has told this service that it hasn't received any further complaints from Mr C on that issue. But if he wants to take a complaint about that to SWL he is able to.

SWL has acknowledged that its service wasn't always perfect. It didn't respond to Mr C's July 2023 letter for several months. And it used an incorrect name for him in an email on 22 February 2022, although this didn't stop the communication getting to him. SWL has offered Mr C £200 for these service failings. I consider that this is reasonable under the circumstances. While I can see that Mr C has rejected this offer, I would expect it to still be available if he changes his mind.

Overall, I can't fairly say that SWL needs to take further steps to put things right. So I don't uphold the complaint.

My final decision

I don't uphold this complaint for the reasons above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 December 2024.

Jo Occleshaw
Ombudsman