

## **The complaint**

Miss B says Scottish Widows Limited won't honour a pension policy she holds with it. She says this will cause her financial detriment.

## **What happened**

Miss B worked for employer (Z) between 2001 and 2004. She has now confirmed she joined the company pension scheme in April 2003 when it was established.

Miss B has provided payslips showing that deductions were made from her salary as contributions towards a Group Personal Pension Plan (GPP) that Z had arranged for its employees through Standard Life between April 2003 and when she left that employer in April 2004.

In August 2023, Miss B began reviewing her pension arrangements. She had several conversations with Scottish Widows to understand the value of her benefits. But she says there was confusion and all that could be found was an account with her national insurance number and her surname associated with it, but for a different person and address.

In October 2023, Miss B escalated her enquiry to a formal complaint. She completed a 'Trace My Pension' form for Scottish Widows, providing her employee and personal details. She calculates that over the relevant period she made contributions of over £5,000 and the value of her fund today should be around £17,000.

On 30 October 2023 she received confirmation from Z that at the time she was employed its employee pension arrangements were with Scottish Widows. However, it said it no longer held any details of the plan or members who left at the time.

On 14 December 2023, Scottish Widows wrote to Z. It explained it had been contacted by Miss B and that she'd been able to show she'd been contributing to its GPP. It explained it didn't hold a record for anyone with her name under Z's scheme. It noted it did have a plan in place for a different person, with Miss B's national insurance number associated with it.

Scottish Widows requested confirmation that she'd been a contributing member of Z's scheme. And it sought evidence of premiums being paid to it. Despite chasing Z for this information, it has never responded effectively to Scottish Widows enquiries.

On 7 March 2024, Scottish Widows issued its final response. In summary, it said Miss B's case had been referred to its senior leadership team. It decided there was insufficient evidence from Z to show a plan was created, or that payments had been sent to it by her former employer. It said it would reconsider her case if further evidence was forthcoming.

On 11 March 2024, Miss B brought her case to this Service. An Investigator considered her case but didn't uphold it. He didn't think there was enough evidence to compel Scottish Widows to create a policy for her. Miss B disagreed.

As both parties couldn't agree with the Investigator's view, Miss B's complaint was passed to me to review afresh. I issued my provisional decision in September. Both parties have provided further evidence and arguments, which I will deal with in this 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Miss B's complaint, but not to the extent she'd like. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by Scottish Widows for Miss B. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Miss B's complaint.

The Investigator noted in his last response to Miss B that she can't provide a policy schedule or number, annual statements, confirm her selected retirement date or show that the pension contributions Z took from her salary were paid over to Scottish Widows. This is true, but I can't ignore the strong evidence contemporaneous with events complained about that she has provided, showing:

- She was in possession of certain policy booklets which related to a GPP with Scottish Widows from the relevant period.
- She made contributions from her salary, which according to her payslips were earmarked for a GPP which Z has confirmed it had in place with Scottish Widows for the benefit of its employees.
- Z wrote to her on 19 March 2004, a month before she was due to leave its employment, stating amongst other matters that:

*"Your participation in the [...] Company Pension Scheme with Scottish Widows will cease on 18 April 2004. If you have any query on your personal pension plan, please contact [X]."*

- Scottish Widows has a policy for a person matching her national insurance number and surname. But it says this is actually in respect of another individual with a different address.

I asked Miss B for more information about her employment with Z. In responding to my provisional decision she said:

*"I can confirm that I was a full-time, permanent member of staff working a 40 hour week for the full duration of my time working for them which was September 2001 to April 2004. No part of the employment was unpaid. I have a total of 25 payslips from my time at [Z] ranging from November 2002 through to April 2004. Please note I joined the pension scheme in April 2003 and I left the company in April 2004."*

Based on the available evidence, I've concluded it's more likely than not Miss B did have deductions made from her salary, which should've been earmarked for the GPP arrangement Z had put in place with Scottish Widows. I've not seen any arguments which suggest she didn't make the contributions shown on her payslips. Nor that when she left her employment she received a refund of contributions.

It's not Miss B's fault that something serious has gone awry. Based on the information currently available, it seems more likely than not Scottish Widows, Z or both these parties got something wrong. The problem is neither has been able to identify where the problem arose or who was responsible.

The following extract is taken from the record of the investigation Scottish Widows conducted into Miss B's complaint:

*"After completing an extensive search of the systems available to us, we were able to find a scheme list, but we couldn't find Miss B under the list of active members nor the list of inactive members. It's a small scheme so we also checked all the dates of birth but nobody on those lists were born on [Miss B's birthdate]"*

*"There was some confusion caused because when searching our systems under Miss B's NINO, it showed a policy number for a different customer. We looked through all the records available to us for this policy as well to see if there was any mention of Miss B, but we couldn't locate anything."*

*"We don't know how Miss B's NINO has linked to another customer's policy; it is a possibility the employer gave us the wrong NINO when the policy was created. We wouldn't question a NINO at the point of creating a policy because we have nothing else to compare it with, i.e. we wouldn't know that it was an incorrect number."*

*"We have checked our records but haven't been able to locate the original application form for the other customer's policy to establish what went wrong and unfortunately, due to the length of time that has elapsed since the policy started, in line with GDPR, we are not obliged to keep records for this long."*

*"It would seem from looking at the pay slip Miss B provided us a copy of from 2003 that her employer was making pension contributions, but this isn't to say a policy was set up for the contributions to be received at our end. Pay slips showing contributions taken (by Employer) does not equate to contributions being sent to Scottish Widows or applied to a policy. Again, due to the length of time that has elapsed we haven't been able to locate a contribution file to evidence whether contributions for Miss B were received at our end or not."*

*"Furthermore, the screen shot of the Welcome Pack she received at the time wouldn't be enough to evidence a policy was set up as it only shows marketing booklets and not the actual policy documents. If a policy had been set up, the policy number and details should have been enclosed within the Welcome Pack."*

I accept Scottish Widows has tried to get to the bottom of what has happened to Miss B's pension contributions. I also recognise it has tried to reach out to her previous employer, but that to date Z has been unresponsive. That is unacceptable, but not a matter I can address since Z isn't an entity under this Service's jurisdiction. I will return to this matter and the avenues open to Miss B in that regard.

I don't accept, from any regulated party, the passage of time is a good reason for not being able to access important information. In particular, where there are dealings in matters such as pensions, which by their nature are long-lived contracts with a major impact on the lives of people in retirement. And so regulated entities must have an approach to record keeping that is cognisant of such.

Scottish Widows has taken further action since my provisional decision. And it has told me:

*"Whilst we understand the position Miss B is in, based on the information available it is not possible to confirm where the error occurred, we have nothing to show that the records were merged but do note they have similar credentials but it may be that the Employer only sent us contributions for one member..., under one NINO. We have requested the contribution file from them (we do not have this record anymore that we could see), or confirmation of Miss B's enrolment in the scheme, to which we've not had a response. The member also has not been able to provide a policy number or any policy specific records. If the member had a policy number for us, we would be able to provide all the information required, this information would have been on the welcome pack and all annual statements..."*

*"...We have checked our records again in relation to this scheme; this scheme only started in April 2003 and the member data was received by a spreadsheet. When a spreadsheet is used the employer should have received a signed joining form from the employee confirming they wanted to join the pension. If a policy was created the member would have received a welcome pack confirming the policy number and details."*

*"We have checked the first member and premium uploads on system and there were two members called [B], one is a [XB], and the other is a [YB]. [neither was Miss B]. If there was a short fall or over payment the employer would have informed us so we could refund any extra payments or arrange to collect any under payment."*

The Investigator and Scottish Widows have both been in contact with Miss B's former employer. The information it's provided has been sparse. It told this Service:

*"We have checked our archive files, but we couldn't find files for either of the ex-employees. I have been able to confirm the NI number for the employee who raised the complaint but not for the other employee. I have provided leave dates for both."*

Based on the information I've seen to date, Z hasn't engaged effectively with this serious matter. It will need to do more to get to the bottom of what has happened to the money it took from Miss B's pay packets for over a year, which it badged as pension contributions.

I mentioned previously Z is not an entity covered by the jurisdiction of this Service. However, it's activity and conduct might be covered by the Pension Ombudsman <https://www.pensions-ombudsman.org.uk/>.

This is an avenue Miss B might want to explore to achieve the engagement required from Z to get to the bottom of what has happened to her year of pension contributions. The Pension Ombudsman's website is very useful covering matters such as unpaid pension contributions <https://www.pensions-ombudsman.org.uk/publication/workplace-pensions-unpaid-pension-contributions>.

At this stage, based on the information available, I've concluded it wouldn't be fair for me to require Scottish Widows to return Miss B to the position she'd have been in now had her contributions been paid into a personal pension and benefitted by the investment growth achieved by the GPP her employer put in place.

However, should Miss B decide to raise a complaint with the Pension Ombudsman about Z and that yields new evidence and information, which shows Scottish Widows was in part or fully responsible for what went wrong, then she will be able to approach it to reconsider its position. And if she doesn't get a satisfactory response, she'll be able to raise another complaint against it.

### **Putting things right**

On balance, it would be fair and reasonable for Miss B to be returned to the position she would've been in had everything worked properly. And that redress outcome is ultimately what will be required of Z, Scottish Widows or a combination of both those parties.

In responding to my provisional decision Scottish Widows has attempted to undertake the further work I required. It has also provided arguments that, at the moment, indicate it's more likely than not any problems were caused by Z, rather than its actions or omissions.

Z has failed to engage properly with Scottish Widows, Miss B or this Service. I've set out the main next step Miss B now needs to take to progress this matter. While Z is beyond the jurisdiction of this Service, it is likely to be covered by the Pension Ombudsman.

I require Scottish Widows Limited to continue to engage effectively with Miss B and Z as new information and evidence comes to the fore. And to take a fair and reasonable approach to any redress which, based on that evidence, it has responsibility to provide.

### **My final decision**

For the reasons I've set out, I'm upholding Miss B's complaint, but not to the extent she'd like.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 15 November 2024.

Kevin Williamson

**Ombudsman**