

The complaint

Mrs R, the representative of the estate of Mr C, complains that Scottish Widows Limited (SWL) unfairly handled his death claim.

What happened

Mr C had a pension policy with SWL, which I understand began on 31 January 1984. In 2011, Mr C's changed his address. Although SWL did know about this, it failed to update its records to reflect the new address. This failure then led to Mr C not receiving various important letters from SWL in 2016 and 2021 about his retirement options before his 75th birthday.

Mr C turned 75 in 2021. But as he hadn't received any of SWL's retirement option letters, he hadn't made a decision about how to use his pension funds.

SWL set up a dummy annuity after Mr C had turned 75 as it'd received no response to the letters it'd sent him. It wrote to him in February 2022 with an "Age 75" default annuity letter, but this was returned undelivered. SWL updated Mr C's address to the correct one on 13 June 2023. It then wrote to Mr C on 16 June 2023 with some details about his pension.

I understand that Mr C became ill in late June 2023 and that he sadly died a few weeks later. Mrs R notified SWL about Mr C's death on 9 August 2023.

SWL wrote to Mrs R on 29 August 2023 to express its condolences and to explain that it'd purchased an annuity on Mr C's behalf when it hadn't heard from him by his 75th birthday.

Mrs R spoke to SWL on 9 October 2023. She felt that Mr C hadn't been in a position to choose his own retirement options due to SWL's options letters being sent to the wrong address. She asked for a review of the dummy annuity that it'd set up.

On 1 November 2023, SWL decided to reverse the annuity so that Mrs R could make a claim on the full pension value. It then arranged for the value of the pension to be paid to Mr C's estate after tax.

On 15 November 2023, Mrs R emailed SWL. She said she'd been told that Mr C's annuity was being reversed so that she and the other claimant could benefit from the full pension amount. She wanted to know when they would receive correspondence so they could make their claim.

On 4 December 2023, Mrs R's IFA asked SWL for an update on the death claim. And on 14 December 2023, SWL asked the IFA for a copy of the death certificate. The IFA replied the same date to say it already had that. It said that Mrs R was becoming increasingly distressed about SWL's failure to communicate about Mr C's pension.

SWL wrote to the IFA on 18 December 2023. It said that it'd sent its requirements to Mrs R on 23 November 2023. It provided the pension fund value. And said that the policy would form part of the estate.

On 10 January 2024, SWL said it received completed claim forms. Both Mrs R and the other claimant had ticked the box stating that Mr C hadn't left a will.

On 14 March 2024, Mrs R sent SWL what she felt was the last piece of documentation it required before it could release the funds to her and the other claimant. She said she'd been informed that SWL could transfer the funds into two separate but equal SWL pensions, one in her name and one in the other claimant's name. She felt they would then be able to draw down on them as and when required.

On 26 March 2024, SWL issued a claim settlement confirmation letter. This stated that it would pay £172,947.09 into Mrs R's bank account. This had been calculated as the total of the claim value of £166,240.17 and interest of £6,706.92. The letter stated:

"Please may I remind you that the proceeds of the policy are due to the estate."

During a call between Mrs R's IFA and SWL on 12 April 2024, a complaint was raised. Mrs R was unhappy with SWL's failure to offer her any options other than a lump sum payment. She wanted it to provide a written explanation of why it hadn't offered other options. And why it'd annuitised Mr C's funds.

SWL issued its final response to the complaint on 30 May 2024. It acknowledged that it had failed to update Mr C's address in 2011, and that this had led to failed attempts to deliver his retirement options letters before his 75th birthday. It sent Mrs R a cheque for £100 compensation for the inconvenience this had caused.

SWL said that in February 2022, when it believed Mr C had failed to respond to its earlier letters, it sent him the "Age 75" default annuity letter, again to an old address. It said that it wasn't until 13 June 2023, after the February 2022 letter had been returned undelivered, that it updated Mr C's address. It said it then issued a retirement quote to the correct address on 16 June 2023.

SWL felt that it'd followed the correct process, and acted in line with the policy terms and conditions, when it'd annuitised Mr C's funds after he'd reached age 75. But it said that due to its failure to update Mr C's address in 2011, it'd taken a business decision to reverse the annuity on 1 November 2023, after Mrs R had requested a review of that annuity in October 2023. It said it'd done this so that a claim could be made on the full pension value.

SWL said that it hadn't offered a drawdown option to the claimants as the proceeds of Mr C's policy were payable to his estate, not a beneficiary. It said the only option was a lump sum payment.

Mrs R brought the complaint to this service in June 2024. She said that while SWL had acknowledged that it shouldn't have purchased an annuity for Mr C, and had unwound that purchase, it hadn't considered that its failure to update his address had led to Mr C not having the option of choosing how he wanted to use his pension pot.

Mrs R said that when SWL had unwound the annuity purchase, it'd then paid 100% of the funds to her. She said it shouldn't have done this as half of the funds belonged to the other claimant. She also said that because SWL had paid the funds as cash, there were inheritance and income tax implications.

Mrs R said that SWL hadn't properly addressed her complaint that it should've unwound the annuity to the point where the funds were placed back in a pension wrapper, so that they could then pass to her and the other claimant as beneficiary pensions, meaning they could take the money tax- efficiently when they needed to. She felt that if SWL had sent its letters

to Mr C's correct address from the start, he would've had time to make a reasoned decision about how he took his pension funds. She felt he would've chosen to take his funds flexibly.

Mrs R said she didn't yet know what her financial losses would be. She felt she'd have to pay higher rate tax on the payment she'd received. And said it would form part of her estate for Inheritance Tax purposes.

To put things right, Mrs R wanted her and the other claimant to be put back in the position she felt they would've been in if the annuity had never been purchased.

On 14 August 2024, SWL made a proactive settlement offer to the estate of Mr C through this service. It reconfirmed that the policy could only be paid as a lump sum to the estate as beneficiary drawdown was never an option. And said that it'd settled the policy to Mrs R as she'd been named Executor on the Grant of Probate. But it felt that it may have delayed the claim settlement as it'd had to reverse the dummy annuity.

SWL offered the following:

- A total of £400 compensation for the distress and inconvenience caused to Mrs R when dealing with the death settlement claim. This included the £100 it'd already paid.
- further compensation for the probable delay in payment due to the annuity reversal. SWL calculated this at 8% simple interest from 10 working days following the date of death notification to the date the annuity was reversed and the funds reapplied to the pension policy. It said it was because this was the date when it started the death claim process on the pension policy.

SWL said that, after allowing for the interest it'd already included in the lump sum payment made, it was offering to pay Mrs R additional net interest of £626.62 and additional compensation for distress and inconvenience of £300, giving a total of £926.62.

Our investigator shared SWL's offer with Mrs R. She didn't accept it. She made the following points:

- She'd never asked for any compensation. Instead, her complaint was that SWL had transferred the funds to the estate, despite her and the other claimant having asked for the funds to be set up as pensions so that they could manage their income and inheritance tax liability. She felt SWL had ignored her request for pensions to be set up because it'd purchased an annuity with Mr C's pension fund. She felt SWL should've unwound the annuitisation and returned the funds to pensions.
- Mrs R said that if SWL hadn't failed to update Mr C's address in 2011, he would've been able to instruct these changes. She said he hadn't needed the funds from his SWL pension.

Our investigator felt that SWL's settlement offer was fair. She said that despite failing to update Mr C's address in 2011, SWL had acted reasonably when it'd reversed the annuity and paid the lump sum to Mr C's estate. She also felt that the total of £400 compensation SWL had now offered Mrs R in recognition of the distress and inconvenience it'd caused was fair. And considered that the interest it'd offered on the lump sum payment due to the delays caused when it'd reversed the annuity was in line with what this service would've otherwise asked it to pay.

Overall, our investigator felt that SWL had acknowledged its mistake and that it'd then acted

in line with its obligations, terms, and conditions to put things right.

Mrs R didn't agree with our investigator. She said she'd never seen where in Mr C's policy it stated that the funds had to be paid to the estate. She still felt it was unfair for SWL to refuse to retain the funds as pensions.

Mrs R said she'd taken from SWL documents:

- The reference to the: *"Potential to pass their pension fund onto Beneficiaries free of Inheritance Tax."*
- The statement that if a policyholder died after age 75, *"Beneficiary drawdown is an option"*.

Mrs R felt that if SWL had updated Mr C's address in 2011, when it'd been notified of the change, Mr C would've had the chance to choose the most tax efficient way of passing down his pension on his death. She said Mr C had been a wealthy man, with no reason to draw down on this pension. She said he certainly wouldn't have chosen for the lump sum to be subject to 40% inheritance tax.

Mrs R said that SWL hadn't explained why it couldn't offer the option to have the funds put into a pension/drawdown wrapper. She felt it would be in its interests to do so, as it would retain the funds until drawdown was completed. She also said SWL hadn't sent her a copy of Mr C's pension documents despite her requests for them.

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

I asked Mrs R for further information. I said:

"The information you've provided from the business which covers what happens to someone's pension fund when they die states the following on page 2 about the importance of a nomination form. It states:

"No Inheritance Tax will normally be payable on the value of your pension fund because we will choose who receives the benefits, taking into account any nominations you make. That's why it's so important that you complete a nomination form to tell us who you would like to benefit – this can be more than one person and in whatever proportions you wish. Without this instruction, the passing of benefits will usually be restricted to just your dependants, which could include your spouse and younger children."

The same booklet states the following on the chart on page 4, under "If you are aged 75 or over when you die":

"Beneficiary drawdown – any beneficiary can take the value of your Retirement Account by transferring it to their own beneficiary drawdown policy with Scottish Widows or another provider. The income from that will normally be taxed at their marginal rate of income tax."

Underneath the chart it states:

"It's also important to note that a non-dependant beneficiary who wasn't nominated won't have the option of beneficiary drawdown if you also leave dependants or nominated other individual beneficiaries. To ensure a specific beneficiary has the option of drawdown you should complete a nomination form telling us about them."

I think this is clear that unless [Mr C] had completed a nomination form, nominating you and

[the other claimant] as beneficiaries, you wouldn't be able to have the option of beneficiary drawdown.

Question 1

I understand from the claim forms you completed that [Mr C] died without a will. I'd therefore like to understand why you think he would've definitely completed the nomination of beneficiary form he would've needed to have completed – if the business had correctly updated his address when it should have - to give you and [the other claimant] the opportunity of taking beneficiary drawdown, given [Mr C] didn't complete a will.

Question 2

In your 15 November 2023 email to the business you said you'd been told the pension was being reversed and that you and [the other claimant] could benefit from the full pension amount. Please could you tell me who told you this and when, ideally providing documentary evidence of this?

In summary, Mrs R replied to my questions as follows:

1. She and the other claimant were surprised they couldn't find a will. But Mr C had previously discussed with her and the other claimant that after his death, he wanted anything he had left to be split equally between them. Mrs R felt that this showed that Mr C would've named her and the other claimant on a nomination form if he'd been given the opportunity. She also said that Mr C had wanted to leave her and the other claimant as much as possible. She felt he would've wanted to choose an option which meant as little as possible of his money was lost to tax. She therefore felt he would've named both her and the other claimant on a nomination form before his death if he'd been given the chance. Mrs R felt that SWL had denied Mr C this opportunity when it'd failed to update his address 11 years earlier.
2. Mrs R said that SWL had called her on 30 October 2023 to tell her that it'd ordered the reversal of the annuity as it should never have been turned into one. She said she then received a text on 1 November 2023 with a case reference number. But she said SWL had never confirmed anything in writing.

I asked SWL for policy terms and conditions. Our investigator had requested these from it on 14 October 2024, but we hadn't yet received them.

On 18 December 2024, SWL told this service that although it was still trying to locate a specific policy document, it had found the wording that its claims department uses. This stated the following:

General Information

- ***If policy commenced pre 1/7/1988 then benefits are due to the estate***
- ***If policy commenced post 1/7/1988 then benefits are due to a beneficiary***

Policy in force before 1 July 1988 - Due to the Estate if not under Trust or Assigned

Value is < 100k we can settle with a completed claim form and copy of the Will (we will settle to the executors named in the Will). If there is no Will we will require a Next of Kin form to be completed and sent in with the completed claim form. We will pay to the highest ranking next of kin.

Value >£100k will require a Grant of Probate/Letters of Administration (Scotland) and completed claim form (which must be completed by the executors named in the GOP/Letters of Administration).

Policy in force after 1 July 1988 – Due to Beneficiary/ies

It does not form part of the Estate. We need to follow the discretionary rules for nominating beneficiaries, if the policy value is > £50K you require a Team Manager to agree with the nomination.

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 agree with our investigator that the compensation and interest SWL has offered to pay, alongside the steps it's already taken to put things right, are fair under the circumstances of this complaint. I know this will be disappointing to Mrs R. I'll explain the reasons for my decision.

I'm very sorry for Mrs R's loss. And for the difficulties she's faced in obtaining the death benefits she wanted from Mr C's pension.

I first considered whether it's more likely than not that Mr C would've decided to nominate Mrs R and the other claimant as his beneficiaries under his SWL pension policy if he'd received SWL's letters between 2011 and 2022.

Would Mr C have nominated Mrs R and the other claimant as his beneficiaries?

Mrs R's position is that if SWL had updated Mr C's address when it should have in 2011, he would've chosen the most tax efficient way of passing down his pension to her and the other claimant on his death. She doesn't think SWL has considered that its failure to update Mr C's address led directly to him not having the option to choose how he wanted to use his pension pot.

Mrs R has confirmed to this service that Mr C didn't leave a will. But she told this service that he had previously discussed with her and the other claimant that he wanted to leave them both as much as he could after his death. She feels this shows that Mr C would've named her and the other claimant on a nomination form if SWL had given him the opportunity to.

I don't doubt Mrs R's testimony that Mr C intended to leave her and the other claimant well-provided for. But I'm not persuaded that he would've definitely named them both as his nominated beneficiaries on his SWL pension if SWL hadn't failed to update his address in 2011.

I say this because the evidence shows that despite feeling the way he did about wanting to leave Mrs R and the other claimant well provided for after his death, he didn't leave a will. I think this shows that, on balance of probabilities, Mr C wouldn't have named them as his nominated beneficiaries on his SWL pension even if SWL had correctly updated his address.

I also say this because there's no evidence to show that Mr C didn't receive documents from SWL before he changed his address in 2011. Again, on balance of probabilities, I'm persuaded that it's more likely than not that SWL would at some point have sent Mr C information about a nomination form. So I consider it likely that he would've been made aware during the life of his policy that it was a good idea to complete such a form. But

despite that, the evidence shows that he didn't.

I'm therefore persuaded that if SWL had correctly updated the address details it held for Mr C in 2011, he still wouldn't have completed a nomination of beneficiary form for both Mrs R and the other claimant.

I next considered whether SWL could've paid the death benefits from the policy to Mrs R and the other claimant despite Mr C not having nominated them as his beneficiaries on the policy.

Could SWL have set up beneficiary pensions for Mrs R and the other claimant despite them not being named as Mr C's beneficiaries under the policy?

Mrs R feels that SWL hasn't properly considered her complaint that it should've set up beneficiary pensions for her and the other claimant, rather than only offering a lump sum payment to the estate. She also feels that SWL hasn't explained why it couldn't offer the option she and the other claimant wanted.

SWL has told Mrs R that due to its failure to update Mr C's address in 2011, it took a business decision to reverse the annuity, so that the estate could then make a claim on the full pension value. It said it didn't offer Mrs R and the other claimant the pension option they had asked for because the proceeds of Mr C's policy were payable to his estate, not a beneficiary. As such, the only option was a lump sum payment.

As I noted in my information request to Mrs R, I'm not persuaded that SWL had the option to pay her and the other claimant a beneficiary pension under the terms of Mr C's policy. I say this because SWL's documentation about Mr C's policy states that he would've needed to have completed a nomination form, nominating Mrs R and the other claimant as beneficiaries, for that to have been a potential option after his death after age 75. I also say this based on the start date of Mr C's policy and the wording SWL said its claims department uses. And because I agree with Mrs R that SWL would've retained Mr C's pension funds if it could've, given it would've been in its interests to do so. The evidence also shows that SWL made it clear to Mrs R that the proceeds of the policy were due to Mr C's estate on more than one occasion during the claims process.

I acknowledge that Mrs R believes that she'll pay more inheritance tax in future due to receiving a lump sum payment now, rather than having access to the drawdown pension she requested. I've explained above why I'm not persuaded that SWL should've made that option available to her and the other claimant. But in any event, I'm not persuaded that it's certain that Mrs R will pay more inheritance tax than she would have if SWL had been able to offer her the pension option she wanted. I say this because the current government has said that from April 2027, death benefits from pensions will form part of a policyholder's estate.

I appreciate Mrs R's point that she may pay more income tax on her share of the lump sum SWL paid to the estate than she would've paid if it'd been able to pay the death benefits of the policy to her as a beneficiary pension. But I can't fairly hold SWL responsible for this. I say this because, as I noted earlier, I'm not persuaded the policy allowed it to take the action Mrs R wanted it to take. I also acknowledge that SWL has yet to provide Mrs R with a copy of the terms and conditions of the policy. While it would've been preferable if it had been able to locate that document, I'm satisfied that the information it's been able to provide instead does evidence that the option Mrs R wanted to take wasn't available to her.

I uphold this complaint, as I understand that SWL has yet to pay the additional compensation and interest it has offered Mrs R and the estate of Mr C. But I don't require it to take any

additional steps over and above those it has offered to take to put things right.

Putting things right

Scottish Widows Limited must take the following steps to put things right:

- pay Mrs R a total of £400 compensation for the distress and inconvenience it has caused. It can deduct any compensation it has already paid in respect of distress and inconvenience from this figure.
- pay the estate of Mr C additional net interest of £626.62 in respect of the delayed payment of the lump sum.

Income tax may be payable on any interest paid. If SWL deducts income tax from the interest, it should tell the estate of Mr C how much has been taken off. SWL should give Mrs R a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

My final decision

For the reasons set out above, I uphold the estate of Mr C's complaint. Scottish Widows Limited must take the action detailed in "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 16 January 2025.

Jo Occleshaw
Ombudsman