

The complaint

Mr W complains that Scottish Widows Limited (Scottish Widows), after it seemingly agreed to the terms of an annuity purchase from the proceeds of an Open Market Option (OMO), then declined it three weeks later as it said it couldn't accept Guaranteed Minimum Pension (GMP) benefits. Mr W says Scottish Widows has breached its contract with him and he would like it to compensate him for the difference between the yearly annuity amount it offered him against what he eventually received from another provider – for a payment period of 30 years.

What happened

Mr W held pension benefits in a section 32 policy. In late 2023 he wanted to look at his options regarding the plan and discussed with his adviser the alternative of taking an OMO and buying an annuity – at a higher rate than offered by his provider. On 5 October 2023, the adviser received a retirement options pack from the provider and began to research whether a higher annuity payment was available elsewhere.

Using an external quotation system an Illustration dated 16 October 2023 was produced for a Scottish Widows annuity. This noted it would provide a guaranteed yearly income of £5,013.96 as long as Mr W's personal details were correct, and payment and an application form were received by 29 November 2023.

Scottish Widows set up an Origo electronic transfer request on 24 October 2023 but was then informed by the ceding provider that the pension contained a GMP. Scottish Widows then told Mr W that his application couldn't be processed electronically and would require paper documentation to be completed and sent in.

On 13 November 2023 Mr W's adviser contacted Scottish Widows explaining that the ceding provider wanted conformation of the annuity to be provided and whether the GMP benefits were acceptable. But on 16 November 2023 Scottish Widows emailed the adviser to say that it couldn't accept transfers that contain GMP benefits and wouldn't be able to process the transfer and offer an annuity.

So Mr W complained. He thought Scottish Widows was in breach of its contract with him. He said he'd now secured another annuity, but it provided £129 less income per year. He said he wanted compensation for the annuity shortfall he would lose each year.

Scottish Widows made the following points in response:

- Any illustrations provided at the 'research stage' didn't constitute an offer. An offer is only made when the adviser requests an application form and illustration directly from Scottish Widows and returns it.
- The illustration it provided on 16 October 2023 was based on the information provided – which didn't make reference to a GMP. In addition the application form contained a warning that Scottish Widows didn't accept GMP benefits.
- When it received the application it set up the transfer on the Origo system. The ceding provider noted on the system that Mr W's policy contained GMP benefits and at this point it was unable to proceed with the transfer.

- The quotation first obtained from the adviser was from an external source which Scottish Widows wasn't able to access – so it wasn't aware of the quotation. But it accepted the external source shouldn't have issued the quotation and said it would investigate that matter and engage with the external provider.
- It became aware that the transfer couldn't be accepted on 2 November 2023 and should have advised Mr W of the outcome at that point. Instead it said that the transfer couldn't be completed via the electronic system and would need to be manually processed. As it didn't notify Mr W about the declined application until two weeks – and then only by a one line email – it hadn't treated Mr W fairly around that matter.
- It also made an error in not advising Mr W about all the correspondence that was sent about the transfer after 24 October 2023.
- It should have responded to Mr W's complaint sent directly to its Chief Executive.
- For all the errors it had made and the poor level of service it provided it offered £500 compensation. But it didn't think it had done anything wrong by (correctly) rejecting the transfer due to its limitations in accepting GMP benefits.
- It would be willing to consider any financial loss Mr W had suffered by not being able to take up an annuity quotation elsewhere at the point it knew it was unable to accommodate his application.

Mr W didn't accept the response and disputed the information provided about GMPs with the two illustrations. Scottish Widows accepted there was a reference to GMP in both illustrations and paid Mr W a further £200.

Mr W remained dissatisfied, so he brought his complaint to us where one of our investigators looked into the matter. He concluded that:

- The illustration that Mr W received from the external portal did say that he was entitled to a GMP from age 65. But it also said that the quotation was only guaranteed when the personal details were confirmed as correct, and the single payment and application form were received before the expiry date.
- So he didn't think the quotation constituted a guaranteed offer, and he also noted that Scottish Widows was entitled not to accept transfers involved GMPs as that was commercial decision it had previously made.
- But Mr W shouldn't have been issued with a quotation in the first place and Scottish Widows should have notified Mr W of its decision not to accept the transfer earlier. He thought this should have been by 1 November 2023 – five working days after Scottish Widows received notification of the GMP from the ceding provider.
- Scottish Widows had offered to consider any financial loss Mr W incurred, on production of supporting evidence, from the delay in making him aware of its decision not to proceed. He thought this was a fair and reasonable offer.
- He thought Scottish Widows offer of £700 in total for the impact its poor service and errors had on Mr W was also fair and reasonable.

Mr W didn't agree. He said:

- Scottish Widows set out that it doesn't accept transfers where a GMP is involved in a generic document, whereas the statement about GMP applying in his case was set out in a "*contract specific document*."
- Scottish Widows hadn't properly explained why its copy of the quotation doesn't contain what he regarded as the "critical page" with the GMP information. He thought there was no other explanation except that this had been "*deleted*."

He asked for his complaint to be referred to an ombudsman – so it was passed to me to review.

My provisional decision

In my provisional decision I said that Scottish Widows should find out the next best annuity offer that Mr W could have taken up around 16 October 2023 and pay any shortfall between that offer and the annuity that he did eventually secure as a capitalised amount. And it should, if it hadn't already, pay Mr W him £700 compensation for the impact the matter had on him. I gave the following reasons to support my decision:

- I didn't think the initial quotation Scottish Widows offered constituted a binding contract. It was a commercial decision Scottish Widows was entitled to make not to accept transfers including a GMP and it wasn't obliged to accept such transfers. Therefore, and despite the errors Scottish Widows made during this process, Mr W simply wouldn't have been able to accept its offer of an annuity.
- But I had to consider whether it made that clear to Mr W's adviser from the outset and if the delay in making the adviser, and Mr W, aware that it couldn't accept the transfer caused both a financial loss and warranted a compensatory payment to Mr W.
- The initial quotation Mr W's adviser obtained set out what annuity Scottish Widows could provide but didn't suggest a transfer with GMP benefits couldn't be considered. I thought that, as Scottish Widows was responsible for the content provided by the external annuity quotation provider, and was able to communicate with it, it should have ensured that there was – at the very least – a warning that GMP benefits couldn't be accepted.
- I accepted that Scottish Widows did confirm its position around these types of transfers further on in the process, but concluded that Mr W should have expected correct and accurate information to have been made available to him at the start of the process – particularly in transactions like this which are often time limited and always time critical.
- So I thought that if Scottish Widows had made its position clear from the outset Mr W's adviser could simply have switched its attention to the next best annuity it had researched and made an application straight away.
- I thought the position Mr W ought now to be in was to be in receipt of the best available annuity available to him on 16 October 2023, outside of Scottish Widows. I said it should work out if Mr W had suffered any financial loss from not receiving the next best annuity available and pay any shortfall to him. In addition I thought its offer of £700 for the impact this matter had on Mr W was fair and reasonable.

Responses to the provisional decision

Scottish Widows said it thought my provisional decision reached the same outcome as it had in its final response letter which told Mr W that, *"if you could provide me with a copy of the initial quote from 16 October 2023 and a copy of your annuity set up documents from 22 January 2024, with the other provider, then I can review and if you have been financially disadvantaged then I can take the appropriate action to restore you to the correct position. I would then let you know if I needed additional information from you or your current annuity provider."*

Mr W said:

- The quotation that Scottish Widows issued on 16 October 2023 was produced by its own systems and not an external provider. So he didn't accept my reference to the quotation being issued "*using an external quotation system.*"
- In his view the quotation clearly constituted a formal offer – with an account number – which he accepted in good faith. He thought it was because of Scottish Widows' lack of diligence that later caused it to reverse that decision because it couldn't deliver what it had initially promised to do. He didn't think that entitled it to "break its contract." He also thought it should be financially penalised for its conduct throughout the process.
- Scottish Widows' offer of the annuity was still being presented to his adviser as an option when it posed questions to Scottish Widows in mid-November 2023. This was despite the question of GMP benefits being involved being asked in the search criteria. He thought this was another example of a lack of "*integrity and honesty.*"
- He still hadn't been provided with an explanation for the "*missing critical page*" of the illustration. He hadn't been told why Scottish Widows' copy of the illustration was without the last page – despite him proving otherwise with his original copy. He thought the only explanation for this was that the copy was amended by Scottish Widows which he concluded was fraudulent.
- His adviser had calculated that the capital sum required to generate the same income as Scottish Widows had offered him was an additional £1,910.51, which he would like as the corrected redress.

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.

And having done so, after careful consideration of both parties responses, I see no reason to depart from my original findings. So I'll set out my final reasons below. I know Mr W is keen to get an outcome to his complaint, and I apologise to him for any frustration over the time this has taken. But I hope, even if it's not exactly the outcome he expected in terms of redress, that this decision will at least provide some closure to this matter.

There were two main questions to consider here. Firstly should Scottish Widows be obliged to honour the initial quotation it provided to him – which Mr W regarded as a binding contract. And did it treat him fairly with regards to the information it provided which allowed his adviser to pursue an annuity application which Scottish Widows subsequently said it couldn't accept.

The initial quotation

Scottish Widows said Mr W's adviser obtained a quotation from an external provider on 16 October 2023, which set out the terms of an offer it was prepared to make following confirmation of his personal details and should an application form and payment be made by 29 November 2023. The illustration noted that Scottish Widows would provide an annual income of £5,013.96.

I should first address Mr W's point that believes this illustration constituted a contract and therefore it was binding, and Scottish Widows should honour it regardless of whether it later discovered its rules didn't allow it to receive a transfer including GMP benefits. But I don't think the illustration was a binding contract. It was an offer of an annuity subject to a completed application form and other outstanding requirements. If that application wasn't in line with the terms and conditions and rules about what Scottish Widows could accept then it wasn't unreasonable to expect the application to be rejected. I think it was only if an application was acceptable to Scottish Widows that a binding contract would have been made. And Mr W himself was free to decide if he wanted to accept the illustration or not and had he decided to take up another offer elsewhere it wouldn't be fair to say that he had broken a contract either.

Mr W has also complained that to date he hasn't received an explanation for the discrepancy in the illustration he received which says, "*you are entitled to a guaranteed minimum pension from 65 paying an estimated annual income of £4,476.16*", and the illustration Scottish Widows initially referred to which didn't seem to contain the last page with the GMP reference. I know Mr W is concerned about this matter and I can understand why he feels that way. I am unable to provide Mr W with a further explanation beyond which Scottish Widows has given which is that the external portal illustration should not have contained the final page and that this was also sent in error to him and his adviser.

Scottish Widows has apologised for this error and paid additional compensation which I'll pick up upon later in this decision. But it's not our role to punish a business or investigate its practices – that's for the regulator to look at if appropriate – so to that end, as I've already said in my provisional decision that Scottish Widows should have rejected Mr W's application at the point of issuing an illustration, then the question of what information was contained in the various quotations isn't material to the outcome of this complaint – namely whether Mr W has suffered a financial loss because of Scottish Widows actions.

But I also have to consider whether Scottish Widows acted within its rules by rejecting the transfer. It's not uncommon in my experience for providers not to accept transfers involving GMP benefits and Scottish Widows was entitled to make that business decision as long as it communicated it to Mr W. The first documentation that was available to Mr W and his adviser – after the illustration – was the application which clearly noted "*we cannot accept any Guaranteed Minimum Pension (GMP), section 9(2b) rights of final salary benefits accrued after 5 April 1997.*" So I think this set out its position that such a transfer wouldn't be accepted and after this when it found out that GMP benefits were involved it rejected the transfer.

I'll comment on what should have happened below, but I'm satisfied, despite the errors that were made, that Scottish Widows wouldn't have accepted Mr W's transfer request and therefore he wouldn't have been able to take up an annuity with it as I don't think it would have been available to him.

What should have happened?

Mr W's principal complaint point is that Scottish Widows should honour the annuity it offered him as he believed that formed the basis of a binding contract.

I've already said that I don't think the illustration did constitute a contract and that Scottish Widows simply wouldn't have accepted the transfer in the end – nor should it be obliged to honour it. But I have gone on to consider what ought to have happened here. When Mr W's

adviser obtained an illustration from Scottish Widows it was noted that there was a yearly GMP of £4,476.16. There was no suggestion at this point that an application wouldn't be accepted, and I think it was reasonable for Mr W's adviser to continue with the process. It was after all time critical to make an application before any illustration expired. So I think this was the point at which the adviser ought to have been made aware that a transfer wasn't acceptable to Scottish Widows under its terms and conditions.

I think the illustration ought to have made that clear and I believe, whether the illustration came from it directly or via an external source, Scottish Widows had a duty of care to ensure it provided accurate information about its acceptance criteria. If it didn't accept transfers from GMP benefits it needed to make that abundantly clear in the illustration or even ensure its systems couldn't provide an illustration in such circumstances. There's no evidence to suggest that happened in this case. Indeed Scottish Widows has seemingly accepted my position as it said it offered to compensate Mr W for any loss he suffered from not being able to pursue an alternative application from 16 October 2023, and also said it would speak with the external illustration provider to ensure such information was readily available.

When deciding what annuity illustration to accept I think an adviser is entitled to rely on the accuracy of the provider's information and criteria and I've seen nothing to support the idea that Mr W's adviser shouldn't have pursued matters with Scottish Widows. I think Scottish Widows needed to ensure the adviser was made aware that it wouldn't be able to accept the transfer and I'm not satisfied it did that in this case.

If Scottish Widows had made the adviser aware I think it would simply have moved on to the next best available annuity provider and pursued an application with them.

What does Scottish Widows have to do to put things right?

Although I don't think it should have to honour its original illustration I don't think Scottish Widows treated Mr W fairly during this process. As well as failing to make his adviser aware that the transfer wasn't acceptable at the point of the illustration, it also didn't make Mr W aware of the rejection some three weeks after the ceding provider had made it aware that GMP benefits existed.

It also didn't explain the reason for rejecting the application with sufficient detail and failed to provide Mr W with an email that was promised, as well as suggesting there hadn't been any further communication regarding the transfer after 24 October 2023. This suggested Mr W's adviser hadn't forwarded the transfer request, although at this point it had been put onto the electronic transfer system.

There's also the matter of the missing page from its copy of the illustration and, although Scottish Widows has provided an explanation, would still suggest an error in the documentation that was given to Mr W. I know this has caused him a great deal of frustration and concern that the document may have been "*amended*" during the complaint process, which I know has eroded his trust in the way Scottish Widows has behaved towards him.

I think these are significant errors and omissions which would have significantly added to Mr W's frustration and concerns about the overall process. The errors also happened at a time when Mr W should have already been told that his transfer couldn't be processed.

I think these errors would have impacted Mr W to a significant degree and I've seen in his submissions how concerned and upset he was about them. In the circumstances I believe they warrant a compensatory payment in line with a significant impact to Mr W. However, looking at Scottish Widows' total offer of £700 – including £200 for the issue with the

illustration – and taking into account the overall circumstances here, I think that's a fair and reasonable offer and within the range of what I would have recommended.

I also have to consider what Scottish Widows needs to do to put things right regarding any financial loss Mr W may have suffered. Scottish Widows has said it already offered to do what I said in my provisional decision. There is also a suggestion that Mr W did in fact obtain the next best annuity offer that was available, and so it's possible no redress will be due. But as this is a final decision I'll set out again what the redress solution should be, so there can be no doubt what needs to happen should the above situation be incorrect.

Scottish Widows needs to consider the next best annuity that Mr W might have been able to secure –which accepted GMP benefits – from those available at the time (16 October 2023) and compare it with the annuity Mr W eventually secured. If there is a shortfall between those annuities Scottish Widows should calculate the purchase price needed to secure each annuity and pay that capital difference to him.

This amount should be paid to Mr W minus a deduction equivalent to his highest marginal income tax rate because future income from the annuity is taxable as unearned income – I've assumed for the purposes of this decision that this will be 20%.

But for Scottish Widows' errors, I think it's likely that the annuity could have begun sooner, but I think any loss here is probably adequately covered by the overall £700 payment offered by Scottish Widows in respect of its poor service and administrative errors.

I know Mr W has indicated his adviser thinks the redress payment should be a capital payment of £1,910.51 to reflect the difference between his current annuity and the one initially quoted by Scottish Widows. But as I've explained I don't think Mr W was entitled to the annuity with Scottish Widows, so it wouldn't be fair for me to support the idea of a repayment of any shortfall between the current annuity and one that he wouldn't have been able to obtain. The redress I've set out puts Mr W in the position he ought now to be in which is in receipt of the best annuity available to him – on the date his adviser made an initial request for illustrations (16 October 2023) – outside of Scottish Widows illustration.

My final decision

For the reasons that I've given I uphold Mr W's complaint against Scottish Widows Limited. If the £700 payment for the trouble and upset caused hasn't been paid Scottish Widows should pay that, as well as ensuring the redress calculation is carried out if Mr W can provide supporting evidence of a next best annuity.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 11 April 2025.

Keith Lawrence
Ombudsman