

The complaint

Mr R complained that his enhanced annuity with Scottish Widows Limited has been reduced following its discovery of an error in not amending some of the health details he corrected on his application.

What happened

Mr R used a broker to search for an enhanced annuity. This involved him providing a detailed medical history which was taken over the phone by an annuity broker. Initially a quote was accepted from Aviva. But upon reviewing the medical details provided by the broker, Mr R identified some details were incorrect. He informed the broker who advised him to amend the details manually, and that the details would also be updated on the broker's system.

On the medical details form, Mr R crossed out the diagnosis date for one of his medical conditions of '14/08/2019' (typed) and replaced it with a handwritten '1/1/1980'. His diabetes diagnosis date, typed as '19/05/2020', was left unchanged. Unfortunately when the broker received this back, the diagnosis date for diabetes was incorrectly amended to 1/1/1980 on their system, rather than the diagnosis date of the medical condition Mr R had amended.

Aware that annuity rates were changing, Mr R requested new quotes. As the broker's system hadn't been updated correctly, the quotes generated on 26 October 2022 were now based on him having been diagnosed with diabetes in 1980. Mr R was unaware of this.

As Scottish Widows was now offering the highest annuity (at an effective rate of 6.74%), the broker sent a Scottish Widows application form to Mr R which contained the incorrect diagnosis date (1980) for diabetes. Mr R amended the date by hand to May 2020, as he'd done previously, before sending the form back to the broker.

The broker submitted the signed annuity application and original medical details form (as above) to Scottish Widows on 11 November 2022 along with confirmation of the annuity quote reference number. That was the quote from 26 October 2022, which was guaranteed for a month but incorrectly based on diabetes being diagnosed in 1980. The section about the Lifetime Allowance (LTA) on this form was left blank. The form had been signed by Mr R on 1 November 2022.

Scottish Widows received this on the same day it was submitted, but didn't take action on the paperwork until 28 November 2022 – contacting Mr R's broker to point out that the LTA declaration was still required. Mr R's broker then returned the completed missing section the following day, intimating that a complaint would be made if matters weren't progressed as quickly as possible. This initially resulted in Scottish Widows agreeing to hold the guarantee on the quote until 12 December 2022..

Scottish Widows' request for the funds from Mr R's ceding scheme went to an incorrectly-named provider on 3 December 2022, so had to be resubmitted on 8 December. The correct provider asked Scottish Widows the next day (and his broker on 14 December) why the transfer request was for uncrystallised funds when Mr R's SIPP was already in full

drawdown. No progress was made until Mr R's broker contacted Scottish Widows about this on 22 December, and Scottish Widows didn't receive the corrected forms until 28 December.

However, Scottish Widows then didn't request the funds from the correct provider again until 10 January 2023. So it agreed on that date that it would continue to honour the same rate in the quote from 26 October 2022. Between then and 17 January Mr R's ceding scheme was seeking clarification on which tranche of funds was to remain open within the SIPP, as a partial transfer was being made.

The annuity started on 23 January 2023 at the amount of £20,229pa with annual increases in line with the Retail Prices Index (RPI).

This service subsequently considered some earlier complaints from Mr R about Scottish Widows' and his broker's delays in setting up the annuity. These aren't being revisited in the current complaint. In short, our Investigator found on those earlier complaints that:

- Scottish Widows should have acted on the forms it received (on 11 November 2022) within five working days, so that the missing LTA declaration could have been provided. This was a six working day delay.
- The transfer request to the incorrect provider and for uncrystallised funds were all delays caused by Mr R's broker (a total of 15 working days).
- Scottish Widows should have requested the funds again (when it had the correct forms to request uncrystallised funds) within five working days, so it caused another three working days delay here.
- Finally, had Mr R's broker not instructed a partial transfer, there would have been no need to clarify which tranche was remaining open. So his broker was responsible for a further five working day delay here.

This meant that in the Investigator's opinion, there were 29 days of avoidable delays. Scottish Widows had already offered to pay compensation for 14 days, so he concluded that offer was fair and reasonable. Scottish Widows therefore met about half the cost of backdating the annuity to an earlier start date, with his broker meeting the remainder. As all three parties (Mr R, his broker and Scottish Widows) agreed to the Investigator's views at the time, I won't be revisiting those timescales in this decision.

Importantly, a change in annuity rate didn't feature in the compensation for these earlier complaints, because Scottish Widows was still holding open the rate in the quote from 26 October 2022.

However on 31 January 2023, Scottish Widows had informed Mr R that his application had been selected for random sampling. A medical report would be requested from his GP which would then be compared to the information on the application. Scottish Widows received the GP's initial reply in May 2023, which prompted it to seek further clarification from the GP. That took several months.

In March 2024, Scottish Widows told Mr R that based on the medical information received from the GP, the level of enhancement previously offered had been reduced from its then level of £21,330 a year to £18,221 a year. (In other words, Scottish Widows was saying that without the 5.44% annual increase paid in January 2024, the annuity should have started at about £17,280 a year – an effective rate of 5.76% on the sum received.) Scottish Widows said the reduction was effective from commencement of the annuity, so any overpayments would have to be repaid. Subsequent monthly income payments were reduced to begin clawing back the overpayment sum.

Mr R brought a new complaint as he didn't think Scottish Widows had adequately explained what had happened and why it could change what he considered to be a binding contract. Scottish Widows explained that the quote he accepted had been produced based on him having been diagnosed with diabetes in 1980, as specified in the information supplied by his broker. This was despite Mr R manually correcting the date to May 2020 on his annuity application form. So, it was unable to honour the quote of 26 October 2022 as it was generated based on erroneous information. But it apologised for its part in not amending the application taking into account Mr R's manual correction, and offered him £1,200 for the distress caused. Mr R accepted that £1,200 on an ex gratia basis without prejudicing his right to bring this new complaint to our service.

While our Investigator was reviewing Mr R's new complaint, Scottish Widows agreed to no longer pursue Mr R for the past overpayment and to reverse the amounts it had clawed back from his ongoing payments thus far. Although Mr R has a number of other medical conditions, and his GP has now confirmed the diabetes diagnosis was formally made in April 2021 rather than May 2020, Scottish Widows confirmed that it was the incorrect 1980 diabetes diagnosis date that caused the spike in the enhancement to the annuity quote. That is, the difference between the 2021 and 2020 diagnosis date was immaterial.

In summary, our Investigator reached the following view on the new complaint:

- Whilst Mr R believed Scottish Widows should be required to honour the original quote, it was founded on a mistake – so he was never actually entitled to such a high enhancement. The application form he signed made it clear Scottish Widows could reduce the annuity income if any of the information was incorrect or incomplete.
- Nevertheless, Mr R hadn't deliberately or knowingly misled Scottish Widows. He accepted the annuity quote in good faith, having previously notified the broker and amended the application form with the correct diabetes diagnosis date.
- Scottish Widows was still responsible for checking and verifying the information from the quote, the application form and the medical details form. It had admitted it failed to identify the error after it received the application on 11 November 2022.
- It had acted fairly and reasonably with both its offer for distress and inconvenience and not seeking to recover the past overpayments. (Mr R had likely dissipated the annuity income in the ordinary course of living, unaware of the error that had taken place.)
- But had Scottish Widows identified the error before the annuity began, Mr R would have had the opportunity to obtain a more favourable quote from another provider.
- Scottish Widows should therefore obtain backdated quotes, and if a higher annuity income was available from another provider, match that income by increasing his annuity.

Mr R didn't agree with the Investigator, on the basis that the information *he* had provided was not incorrect or incomplete. If that didn't persuade the Investigator, he added:

"It is not obvious to me how to determine fairly the counterfactual without quite a lot of thought and work. Was it the date of the initial quote or the requote? Or I could have taken the decision to wait until rates improved? I suggest that you elect for the best of
- the original quote date
- the requote date
- the date of the highest yield in the 12 months following the original quote date"

Mr R pointed that if any of these quotes were at least equal to the pension he is now receiving, his point about honouring the original quote became moot. But otherwise, he didn't consider that Scottish Widows had adequately demonstrated, from a legal point of view, why

he was no longer able to rely on its original quotation. He referred to a decision by an Ombudsman at this service in 2015 which required a provider to honour a quote that had been generated based on a mistake.

For its part Scottish Widows responded as follows:

- It was now clear that Mr R's annuity broker was at fault for the original error with the medical information.
- It could obtain its own backdated quotes internally, but it will be difficult to go to all annuity providers and ask for backdated quotes for a customer that isn't theirs.
- In any event, the Investigator had already accepted that Mr R applied to Scottish Widows because its quote at the time was highest.
- Scottish Widows was aware that its annuity repricing in mid-October 2022 had indeed resulted in its quotes being higher than the four other firms in the annuity market at that time on all the types of quote monitored.
- That meant Mr R was unlikely to have benefited from shopping around even if Scottish Widows had discovered the error and notified him accordingly.

Fortunately the Investigator was able to ask both Aviva and Scottish Widows directly to recreate quotes as of 26 October 2022 and he found that the Aviva quote was lower. So, that suggested Mr R would still have chosen Scottish Widows as his annuity provider.

Mr R continued to disagree, saying in summary:

- His position remains that there are two principles that need to be considered – the one relating to contract, the other to mistake.
- This is an issue of misrepresentation, and therefore one of contract. And the options he has are either seeking to void the agreement or enforcing the agreement.
- Whilst he understands the agreement may not be voidable for statutory reasons, if that is so it would follow that it is even more important that he is able to rely on representations made to induce the contract.
- It would simply be unfair if Scottish Widows isn't held responsible for accuracy but he is. Scottish Widows is given an each way bet without moral hazard, but he is subject to moral hazard for mistake.
- In fact, given the disproportionate power Scottish Widows has compared to him, he thinks that it should be held to a higher standard.
- Losing £3,000 a year from his pension is having an impact on his ability to demonstrate sufficient income in order to get married outside the UK.

As agreement couldn't be reached the matter was passed to me for consideration as Ombudsman.

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.

Misrepresentation under the contract

In effect Mr R argues that as he provided all the correct medical information to Scottish Widows, but Scottish Widows simply didn't correctly incorporate that information into its quote, he was entitled to rely on the quote (which then forms part of his contract with Scottish Widows). I don't consider this is the right analysis of what's happened in this case.

In particular another decision of this service, which Mr R seeks to compare his case with, was made in a somewhat different set of circumstances. The other case wasn't an enhanced annuity and evidently there was no mistake with the information input to the annuity provider's system. Whilst the detail given in the decision is limited, it appears in that case the system generated an incorrect quote due to an internal error. In addition, the quotation gave no indication of the circumstances in which the amounts could change and the provider was unable to explain how the error occurred or why it didn't consider it was bound to pay the erroneous amount.

We decide every case on its own merits and in any event there are a number of differences with Mr R's complaint. Here, it was a known possibility all along that Aviva going back to sample the accuracy of the medical information could result in it needing to amend the terms of the annuity, and the quote referred to this. It said:

"The quotation is guaranteed:

- if your personal details are correct,*
- if the medical and lifestyle information about you, given to us for the purpose of this quotation, is accurate and complete, and does not change before the Enhanced Annuity starts, and*
- the Transfer payment shown and application form is received by 24/11/2022".*

I realise Mr R will say that this disclaimer doesn't cater for his situation because the information *he* gave was correct (other than what appears to be an immaterial difference in the diabetes diagnosis date between 2020 and 2021). However in my view the annuity contract wasn't just formed on the basis of the application form and supplementary medical information provided. The quote Scottish Widows had produced dated 26 October 2022 was also incorporated into the contract. The application form said:

"This application is for the purchase of a Scottish Widows Enhanced Annuity based on quotation number [...] dated 26/10/2022."

The application form also asked Mr R to check the medical details carefully and clearly he did, correcting the diabetes diagnosis date from 1980. But that didn't change that the application was based on what was now an incorrect quote – because the medical information in the quote itself was incorrect. Even though I understand Scottish Widows agreed to extend the guarantee date, it was erroneously doing so having not identified that the quote could never be honoured.

In fact we now know that a transcription error by the broker caused Scottish Widows' incorrect quote to be issued in the first place. The broker should also have appreciated that as Mr R had to significantly amend his medical information a second time on the application form it submitted on 11 November 2022, it couldn't expect Scottish Widows to honour the quote. And it was in a position (which Scottish Widows wasn't) to establish whether Mr R should even be purchasing his annuity from Scottish Widows at all. It would only be clear after getting new quotes whether Scottish Widows remained the most competitive.

So even though none of this is Mr R's fault, I take the view that the incorrect quote, which formed part of the application – and because this wasn't spotted by Scottish Widows – resulted in the contract being formed based on incorrect information *"given to us for the purpose of this quotation"*. This is the scenario set out where I've quoted above that Scottish Widows doesn't have to guarantee the payments quoted.

The terms and conditions document for the annuity also confirms it can reduce payments where the medical information wasn't complete (without specifying who – i.e. Mr R or his broker – might have provided that incorrect information):

“Changes we can make

If either you or we find there’s something wrong or missing in your policy documents or application, we’ll correct the annuity if it’s fair to do so. We may correct:

- an enhanced annuity, if any lifestyle or medical information given to us turns out not to be honest or complete...*
- for any other information that’s wrong, such as an incorrect date of birth.”*

Again whilst there’s no suggestion that Mr R has been dishonest, my view is that by Mr R’s broker submitting his application referring to the wrong quote – and even though Mr R manually corrected his diagnosis date – the totality of the information supplied was still incomplete. So, I think there are ample grounds to say that Scottish Widows was entitled to reduce the annuity here.

The remedy of a mistake, whoever made that mistake, is not to put the applicant into the more favourable position mistakenly indicated. Whilst I acknowledge Scottish Widows’ own failure to identify the discrepancy between the quote and Mr R’s corrected information, that doesn’t alter the fact that Mr R should never have been entitled to the rate in the 26 October 2022 quote. So that means I don’t consider Scottish Widows was acting unfairly or unreasonably in reducing Mr R’s income.

Scottish Widows has now commented on why the annuity reduced by the amount it did. It points out that originally in August 2022, it had sent a quote showing diabetes being diagnosed in May 2020, and the loading given for diabetes was the same as that added for Mr R’s height/weight and sleep apnoea. It says this is essentially the same loading that Mr R has now got in his corrected annuity with a more precise diabetes diagnosis date of May 2021.

It explains that diabetes enhancements increase depending on the time passed since diagnosis, because associated complications can increase over time. It is not my role to interfere with legitimate decisions made by underwriters based on their claims experience, and I’m satisfied that an adequate explanation has been provided here.

Scottish Widows has also said that it still took into account the underlying basis of the 26 October 2022 (by which I mean things like the interest rate underpinning the annuity and the overall mortality basis, other than where it altered the medical information) when it made its retrospective correction to the annuity. That’s important because I don’t think it *had* to honour a quote once it was found to be based on erroneous medical information. If Scottish Widows hadn’t already done this, I might have otherwise said it was reasonable for Scottish Widows (or Mr R’s broker) to generate a new quote because the error should have been more promptly identified. But as annuity rates were generally falling during this period, that is unlikely to have benefited Mr R as much as Scottish Widows sticking to the basis of the 26 October 2022 quote. So I think Scottish Widows has treated Mr R fairly in this respect too.

Loss of ability to shop around based on the correct figures

I realise that Mr R may question whether Scottish Widows would actually still been the most competitive provider, if the error had been identified about three weeks after he’d last obtained quotes on 26 October 2022. Part of his complaint is about the loss of the ability to shop around. However we know from Scottish Widows’ internal research that by mid-October it had become the most competitive provider – with the set of rates it regularly sampled being over 3% higher than competitors. I consider that’s likely to mean it remained competitive the following month.

Moreover, I don't consider it's fair and reasonable for any compensation for the loss of the ability to shop around to fall at Scottish Widows' door in the particular circumstances of this case. That's because his broker also had a responsibility to ensure that the correct medical information was entered into the quoting system originally. Scottish Widows not picking up on the discrepancy when Mr R applied for the annuity on 11 November 2022 was a failure in a second line of defence. It would only have been Mr R's broker, on acting diligently when submitting a correct quote for acceptance, who could have identified whether Mr R could obtain a higher level of income elsewhere. So, I'm not persuaded that Scottish Widows should provide additional compensation here.

Mr R says in his current complaint that he is open to the possibility that I may apportion compensation between Scottish Widows and his broker. However he has not brought a complaint to us about these new issues against his broker.

Scottish Widows' decision not to claw back overpayments

Mr R didn't knowingly make an error in his application, and likely arranged his expenditure based on an annuity he wasn't expecting to reduce in the way it has. So I agree with the Investigator that Scottish Widows was wrong to seek to recover the past overpayments, and I'm pleased to see that it changed its position in response to the Investigator's enquiries.

This is also an area in which I think Mr R's comments about the greater power Scottish Widows has in the relationship are relevant. Although Scottish Widows couldn't control the timescale it took to receive information from Mr R's GP, it missed a key opportunity to notice the amendment on his application. That has in part led to Mr R being paid the extra income for as long as he was, and I can't fairly say that was Mr R's fault.

Can Mr R rescind the contract?

Mr R has mentioned the possibility of voiding the contract because it was based on a mistake. There would be HMRC unauthorised payment charges because of the length of time the annuity has been in force, in addition to the low likelihood that the ceding pension provider would accept the funds back – which it would have to do in order to send them elsewhere.

Whilst Scottish Widows selected Mr R's application for sampling and asked Mr R's GP for medical information promptly after the annuity went into force, it took a long time to obtain that information. I don't consider that was Scottish Widows' fault. So in my view unwinding the contract isn't therefore something Scottish Widows can reasonably be expected to facilitate, particularly where the error doesn't seem to have affected which provider Mr R would ultimately have taken his annuity with.

Compensation for distress and inconvenience

Scottish Widows seems to agree that its process should have been to pick up Mr R's manual correction to his medical information on the application form. That stands to reason, or there would be no point asking him to check the information was correct. Mr R wasn't told in this message that if the information was incorrect he should go further and ask for a requote. I also note that in the other quote from Aviva, the medical information on which the quote was based was summarised on the quote itself which would have been more helpful in these circumstances.

None of this excuses that I think Mr R's broker should have appreciated that the quote was incorrect, for the reasons I've given above. So some of the upset Mr R has suffered is not Scottish Widows' fault. Overall I'm satisfied that the compensation of £1,200 Scottish

Widows has already paid for distress and inconvenience is fair and reasonable and there is no need for that to be changed.

My final decision

I uphold Mr R's complaint to this service but do not require Scottish Widows Limited to do anything further than to:

- ensure that any of the past overpayments clawed back from his future annuity after the correction was applied have now been reversed;
- ensure that the £1,200 offered to him for distress and inconvenience (and which he accepted without prejudice) is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 9 July 2025.

Gideon Moore
Ombudsman