

The complaint

Mr C complains that Scottish Widows Limited, trading as Halifax Financial Services ('HFS'), have not treated him fairly as he's now unable to switch his pension fund to a different provider. He went on to say that he'd now like to be allowed to move his pension elsewhere so that he can access his retirement fund through flexible drawdown.

Mr C is represented by both his son and his financial adviser but for simplicity, I'll refer to all submissions as having come from Mr C.

What happened

Mr C opened a capped drawdown plan with HFS in November 2002 when he was 60 years old. The policy, which HFS call an Income Drawdown Plan (IDP), was invested in a range of unit linked funds and its value varied depending upon the underlying performance of those funds. The policy was designed to terminate on Mr C's 75th birthday, meaning if he didn't transfer the fund away prior to that point, his remaining pot would be converted into an annuity which would then provide him with a guaranteed income for life.

In November 2016, HFS sent Mr C a statement for his plan; the letter provided a range of information including a reminder that the policy could not continue beyond his 75th birthday. The same month, HFS say they sent a further letter to Mr C explaining what maturity options were available with his plan and highlighted that he'd need to decide which route he wanted to take prior to reaching his 75th birthday.

On 24 March 2017, HFS wrote to Mr C to provide him with further information on how to prepare for retirement. Their letter explained that under the policy, he needed to choose a retirement option by age 75 but if he didn't wish to make a decision by then, he could transfer the policy to another provider.

After not receiving a response from Mr C, further follow-up letters were sent on 3 July 2017 and 17 July 2017 in an attempt to prompt a reply. The letters contained various pieces of information but in summary, repeated HFS's earlier notice that the plan couldn't continue beyond his 75th birthday and that he'd need to select an option prior to then. HFS also explained that they would terminate the plan shortly before Mr C's 75th birthday, meaning the value of his pot would be frozen whilst they awaited his decision.

In October 2017, Mr C made HFS aware that his wife was seriously ill and that he'd not decided what he wanted to do with his IDP. In light of that information, HFS determined that Mr C was a vulnerable customer and decided to grant a four-week extension to allow him time to consider how he wished to proceed. Their letter explained that if he didn't let them know before the end of the four-week period how he wished to proceed, they would need to refer his case back to their specialist Case Clinic.

The next time HFS heard back from Mr C was some three years later. In October 2020, HFS wrote to Mr C granting a further extension to allow him time to consider what he wished to do

with his plan. At that point, HFS offered him the option of either fully encashing his fund, purchasing an annuity or switching his pot to another provider. At this point, HFS gave Mr C a further eight weeks to make a decision on how he wished to proceed. In their letter of 16 October 2020, HFS explained the monies within Mr C's IDP had been placed into a suspended annuity account. As Mr C's pot was no longer invested, the value of his fund hadn't altered since his 75th birthday, which was £135,553.

Mr C then contacted HFS in November 2021 about his plan. As the previous plan options that HFS had offered Mr C had since expired, they referred his circumstances to their specialist Case Clinic in December 2021 to determine what course of action should be taken in light of the fact that he'd passed his 75th birthday by over four years. After considering Mr C's information and the extensions that had been previously granted, HFS's Case Clinic decided that the only option they were prepared to offer to him was an annuity.

On 14 December 2021, HFS wrote to Mr C explaining that as they didn't hear from him following the extensions that they had granted after he'd reached age 75, they were planning on setting up an annuity for him in accordance with the terms of his policy.

In February 2022, Mr C's financial adviser wrote to HFS asking them to provide information about the plan in readiness for the fund to be switched away. HFS subsequently provided the transfer information to the financial adviser along with the associated paperwork that needed to be completed to enact the switch. After completing three financial planning interviews with Mr C, HFS explained to the adviser on 16 July 2022 that they had provided incorrect information to them because the fund couldn't be moved.

Around a week later, Mr C's financial adviser decided to formally complain to HFS. In summary, he said that he was unhappy the pension pot couldn't be transferred. In addition, he explained that they weren't happy a transfer pack had been issued to Mr C when a switch wasn't permissible.

After reviewing Mr C's complaint, HFS upheld his concerns in part. They said, in summary, that they should have identified sooner that Mr C's plan couldn't be moved away and that this should have been made clear to the adviser at outset. HFS said to say sorry for the distress caused, they were going to pay Mr C £500. However, HFS explained that the only option available to Mr C at this point was an annuity and that he could not switch his fund away.

Mr C was unhappy with HFS's response, so he referred his complaint to this service. In summary, he said that he was unhappy that HFS had given incorrect information to his adviser. He also said that HFS never advised him of the options available to him until 16 October 2020. Mr C explained that he was never informed of any deadlines within which he had to make a decision by. As well as losing his wife, Mr C said he had suffered from a number of health issues of his own over recent years and this had resulted in the need to now take an income from his pension fund as he had become reliant on the state pension.

The complaint was then considered by one of our Investigators. He concluded that HFS hadn't treated Mr C unfairly because from what he'd seen, they'd provided a number of extensions to allow him extra time to make a decision on what to do with his fund after he'd turned 75. In addition, our Investigator was satisfied that Mr C was provided with enough information to be able to make an informed decision about his retirement planning.

Mr C, however, disagreed with our Investigator's findings. In summary, he said that he didn't believe HFS had treated him fairly. In addition, he also explained:

- A pre-retirement pack was never sent to him and HFS haven't been able to prove

otherwise.

- Given his vulnerable status, HFS should have been aware that when they didn't receive any responses to their letters, that a different approach should have been adopted to contacting him. HFS's lack of extra support shows an inappropriate consideration for his circumstances.
- The option to move his IDP to a new provider appears to have been withdrawn without notice or explanation.
- HFS consistently advised that the option to transfer remained available, even after the pension was frozen upon reaching age 75.
- Regardless of whether it's accepted that the correspondence between 2017 and 2020 was received, the matter is now superseded by the letters from 16 October 2020 and 16 December 2021. Mr C went on to say that those letters were identical in so much as they gave no reason to believe the option of either taking a full encashment of the plan or transferring to another provider had been withdrawn.
- The letters that HFS sent didn't explain any consequences for failing to reply - he was never advised of the impact of any inaction. He says that he has no record of ever receiving HFS's four- and eight-week extension letters.

Our Investigator was not persuaded to change his view as he didn't believe that Mr C had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr C then asked the Investigator to pass the case to an Ombudsman for a 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.

I have summarised this complaint in less detail than Mr C has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr C and HFS in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm upholding Mr C's complaint in part, but I won't be instructing HFS to do anything beyond what it's already offered - I'll explain why below.

I've looked closely at the plan that Mr C held with HFS, including the point-of-sale literature and policy document that he would have received at the time he set the IDP up. What's not in any doubt here is that Mr C's IDP could not continue in its then format beyond his 75th

birthday. It either had to be converted into an annuity (which provides a guaranteed income for life) or transferred elsewhere *before* he reached that milestone. I'm satisfied that HFS's literature on this point is sufficiently clear because it states, "*Your Income Drawdown Plan is designed to enable you to defer the commitment of your pension fund into a pension annuity (until your 75th birthday at the latest) but to draw an income in the meantime*". That means before reaching age 75, some form of action was needed if Mr C didn't want to have his pot turned into an annuity.

So, I've gone on to consider what prompts HFS then provided to Mr C in the run up to his 75th birthday and whether they were clear about what action he needed to take.

HFS say they sent a letter to Mr C in November 2016, some eight months prior to him reaching his 75th birthday, explaining what maturity options were available to him. HFS went on to say their letter highlighted that Mr C would need to decide which route he wanted to take prior to reaching his 75th birthday. Unfortunately, HFS said that they no longer hold a copy of that letter and Mr C's son states that his father didn't receive a copy of it. Whilst there is a letter from HFS on file from November 2016, it's an annual statement containing the regular 12 monthly disclosures rather than a specific call to action. I think on balance, it's unlikely a separate pre-retirement letter was sent in November 2016 in addition to the November 2016 statement because HFS would have a copy of it (which they do with all the other letters). The November 2016 statement does however provide a useful reminder that the plan can't continue past Mr C's 75th birthday.

Mr C's son says that his father wasn't aware of the significance that his 75th birthday would have on the plan and that HFS never advised him of the options available until 16 October 2020. HFS, however, say that they sent Mr C a series of letters in the run up to his 75th birthday and they've provided copies of those letters from 2017. Whilst Mr C may not recall receiving the three letters in March and July 2017 because he was likely pre-occupied with caring for his wife who was ill at the time, I'm satisfied that it's more likely than not that HFS sent them. I say that because I can think of no plausible reason why they wouldn't, particularly when the addresses on those letters match that of Mr C's complaint form and is the same property he was residing at when he took the plan out in 2002, where his annual statements were also sent to.

And in any event, I do think it's likely that it was one of those letters that prompted Mr C to contact HFS in October 2017, because he reached out to explain his wife was seriously ill and that he'd not decided what he wanted to do with his IDP, so it therefore follows he knew he had to do 'something' with the plan. In light of that information, HFS determined that Mr C was a vulnerable customer and decided to grant a four-week extension to allow him time to consider how he wished to proceed. Their letter explained that if he didn't let them know before the end of the four-week period how he wished to proceed, they would need to refer his case back to their specialist Case Clinic. So, I'm satisfied that Mr C was aware of the need to take action at age 75 because he asked for more time to consider his options and importantly, HFS put a cap on the duration of that additional window within which he had to respond to them. But there's no evidence that Mr C then contacted HFS to ask for more time once that initial window had expired.

I've also given careful thought to Mr C's personal circumstances. Not only did he lose his wife during the course of these events, but, according to the letter that his financial adviser sent to HFS on 27 October 2022, he too has suffered serious health issues. I don't doubt the impact of and how these events have weighed heavily on Mr C's mind and it's entirely plausible that his retirement affairs weren't front and centre of his mind.

In his complaint to this service, Mr C's son states that HFS should've extended an extra duty of care towards his father because they would've known that he didn't have a financial

adviser. However, whilst I sympathise with Mr C's circumstances, it seems to me that once HFS were made aware of late wife's failing health, they offered him additional reflection time to consider which route he wished to take with his pot. I've not seen any evidence that Mr C needed more time and I don't doubt that had he asked HFS for more reflection time, they'd have offered it – that's evident with the further reflection time that they gave him in October 2020.

Mr C's son has told this service that given his father's vulnerable status, HFS should have been aware that when they didn't receive any responses to their letters, that a different approach should have been adopted to contacting him. He went on to say that HFS's lack of extra support shows an inappropriate consideration for his circumstances - but I don't agree. HFS gave Mr C additional time to reflect on two occasions but they weren't informed of Mr C's other struggles until during the complaints process so it would be unfair to criticise HFS for failing to act on something they didn't know about.

Mr C has said that the letters from 16 October 2020 and 16 December 2021 were identical in so much as they gave no reason to believe the option of either taking a full encashment of the plan or transferring to another provider had been withdrawn. In his complaint, Mr C's son says HFS didn't do enough to inform his father of all the drawbacks of failing to act in a timely manner. But, Mr C isn't paying HFS for financial advice or to tell him what to do, if he was unsure of how to proceed in the circumstances, he should have sought advice from a qualified financial adviser, spoken to trusted family members or sought information from HFS's telephone contact centre.

In his complaint to this service, Mr C's son has explained on multiple occasions that "my father's intention was always to have a drawdown facility", and in addition, explained that his father is struggling financially and needs the ability to access the monies flexibly. Arguably, if it was always the intention of Mr C to want to draw on his monies in a flexible manner, it's not immediately obvious to me why he chose to leave his plan in a suspended account for five years where it would benefit from no growth. I'm satisfied that Mr C was given ample warning of the need to take action *prior* to his 75th birthday. References to the significance of his 75th birthday are covered in the annual statements and as I've already explained, I think on balance, Mr C did receive HFS's prompt letters in 2017 because he contacted them to highlight his wife's illness. From what I've seen, HFS then acted reasonably in accommodating his requests for additional reflection time to consider his options *post* his 75th birthday (in both 2017 and 2020). However, there comes a point at which a business needs to draw a line in the sand – the IDP was designed to provide an annuity at age 75 if it wasn't switched away prior to that point. But, Mr C didn't switch the plan away, he chose to wait nearly five years after his 75th birthday before taking any action at which point it was too late.

I've given thought to Mr C's argument that HFS's letters weren't sufficiently clear about what the impact would be if he failed to inform them of his wishes either before his 75th birthday or on the occasions when extensions were granted. By virtue of the fact Mr C received regular annual statements from HFS that explained his IDP allowed him to defer taking an annuity until his 75th birthday and importantly, that extensions were provided to that deadline, I think is sufficient insight for Mr C to have been able to join the dots and reasonably conclude that those options wouldn't always be on the table. I'm satisfied on balance that HFS's 2017 prompt and subsequent extension letters were all issued and it's likely that Mr C received them, but he failed to act in a timely manner.

Given the multiple prompts that Mr C received from HFS of the need to take action prior to his 75th birthday (in his annual statements and the 2017 letters), if he was ever in any doubt about the consequences of failing to act before that milestone (or during the extension periods that HFS provided), he should have checked with HFS.

I don't think HFS have acted unreasonably by declining the switch of Mr C's IDP, so I'm not upholding this element of his complaint.

£500 cheque for incorrect information

There's no doubt HFS gave Mr C's financial adviser incorrect information in February 2022, and I don't doubt how disappointed Mr C must have been when HFS told him he couldn't switch the fund.

In their complaint resolution letter, HFS have conceded that they got this element of their service wrong and explained that they were issuing a cheque to Mr C for £500 for the inconvenience caused when they incorrectly explained the IDP could be transferred to another provider. Using financial services won't always be hassle free and sometimes firms make mistakes but having thought about the level of payment HFS have offered for this specific element of the complaint, it is in line with what I would have instructed them to pay to Mr C had they not already offered to do so.

In his complaint to this service, Mr C's son has stated that the cheque was never cashed but given the time that's elapsed since that cheque was issued, I well suspect it will have expired anyway. So, my decision is that HFS should re-issue the £500 cheque to Mr C.

My final decision

Scottish Widows Limited, trading as Halifax Financial Services, has already made an offer to pay Mr C £500 to settle the complaint and I think this offer is fair and reasonable in all of the circumstances.

So, my decision is that Scottish Widows Limited, trading as Halifax Financial Services, should pay Mr C £500 if the first cheque they issued has expired.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 February 2025.

Simon Fox
Ombudsman