DRN-5352383

The complaint

Mr M has complained about a transfer of his Scottish Widows Limited personal pension to an occupational pension scheme in July 2014. Mr M subsequently used some of the funds from his occupational scheme to pay HMRC demands and some other costs. At that time those fund withdrawals may not have been appropriately HMRC authorised. Mr M said he has incurred costs as a result.

Mr M says Scottish Widows failed in its responsibilities when dealing with the transfer request. He says it should have done more to warn him of the potential dangers of transferring, and undertaken greater due diligence, in line with the guidance he says was required of transferring schemes at the time. Mr M says he wouldn't have transferred, and therefore wouldn't have put his pension savings at risk or incurred the additional expenses that he did, if Scottish Widows had acted as it should have done.

Mr M's pension was branded in the name of Clerical Medical, which is a trading name of Scottish Widows. However, for ease of reading I will only refer to Scottish Widows within this provisional decision.

What happened

Mr M was self-employed and had an actively trading business. He held three personal pensions, one with Scottish Widows and two with a Firm I'll call Provider S.

In September 2013 another company was incorporated, which I'll call Company T, with Mr M and his wife as directors. Company T was not Mr M's day-to-day business and doesn't appear to have ever traded.

In October 2013 Mr M signed a service agreement with a firm called Liddell Dunbar Limited[1]. The agreement instructed Liddell Dunbar to establish and administer an occupational pension for Company T with Mr M and his wife as trustees. Soon after HMRC registered the occupational pension scheme, which I will call the M Scheme.

Liddell Dunbar sent papers to Scottish Widows and Provider S, on 9 December 2013, requesting they transfer the funds from Mr M's personal pension into the M Scheme pension. It enclosed relevant documents to show that the scheme was established and Mr M had authorised the transfer.

On 17 December 2013 Scottish Widows replied directly to Mr M sending him the forms that would require completion in order for the transfer to go ahead. Mr M and Liddell Dunbar completed those papers and returned them later that month.

In January 2014 Scottish Widows wrote directly to Mr M again. It asked him various details about his relationship with Company T and evidence he was employed by it. It also asked

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[1] At the time of events Liddell Dunbar was a provider and administrator of pensions. It was not regulated by the Financial Conduct Authority (FCA). Liddell Dunbar went into liquidation in 2019 and has since been dissolved.

how he heard about the scheme and if he was expecting cash, a bonus or incentives from joining it.

Scottish Widows reminded Mr M that if he had any doubts about the Scheme he did not have to go ahead with the transfer. It enclosed a leaflet from the Pensions Regulator (TPR) – the leaflet is known as the Scorpion leaflet because of the imagery it contains – which warns of the dangers of pension liberation and the tax charges that may apply. It also provided a link to HMRC's website, which gives examples of the sorts of tax charges applicable in cases where people take unauthorised payments from their pensions – what's often referred to as pension liberation.

In March and April 2014 Scottish Widows chased Mr M for a response to its enquiries.

Mr M eventually responded in June 2014. He said he was a director of Company T. It was a dormant company which he intended to trade through in the future. He said he would not be receiving any cash bonus or incentive for transferring. He said he'd decided to establish the M Scheme to amalgamate all his pensions in one place and invest in HMRC approved investments. He told Scottish Widows that his wife had sadly died recently and he was trying to put his affairs in order.

Scottish Widows said that it remained dissatisfied and didn't intend to proceed with the transfer. However an administrator misread system notes and made the transfer. On 22 July 2014 Scottish Widows confirmed it had transferred £20,600 to the requested bank account.

Once transferred Mr M did not invest the funds but left those to sit in cash.

In the meantime Liddell Dunbar had on two occasions requested that Provider S transfer Mr M's pension funds held with it to Liddell Dunbar. Provider S asked for further information but wasn't satisfied with Liddell Dunbar's responses. Liddell Dunbar made a third request for Provider S to effect the transfer in November 2014. However, again Provider S wasn't happy with the information supplied.

Later that month, November 2014, a firm called CIP sent Provider S Mr M's signed letter of authority for it to release his pension information to CIP. Provider S sent that information to CIP.

The following month, December 2014, Provider S received a request, via the "Origo Options"[2] system to transfer Mr M's pension funds to a small self-administered scheme (SSAS). The SSAS was sponsored by a recently set up company, I'll call Company H. Mr M was Company H's sole director. The SSAS provider was Rowanmoor Group PLC.

Provider S transferred the funds from both of Mr M's personal pensions held with it to Company H's SSAS that month. Together the sum transferred was around £100,000.

Mr M then invested the SSAS funds in opportunities offered by a group of companies known as Group First. Those companies offered investments in storage pods (Store First) and parking spaces (Park First).

In February 2018 Mr M transferred the entire value of the M Scheme from Liddell Dunbar to Company H's SSAS. He did not reinvest the sum and what remains is held in cash.

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[2] Origo is an electronic platform which allows the transfer of pensions and investments which can make transfers more efficient and reduce transfer times.

In 2020, via his representatives, Mr M complained to Scottish Widows. Amongst other things he said it hadn't carried out appropriate due diligence on the transfer. Scottish Widows upheld Mr M’s complaint. In short it said that as all its due diligence requirements had not been met it shouldn’t have gone ahead with the transfer. It offered to reinstate Mr M’s Scottish Widows pension. It also said it would pay him compensation of £300 for his distress and inconvenience arising from the matter and a further £50 as it had delayed responding to his complaint.

While it was gathering information to reinstate Mr M’s pension Scottish Widows learned that Mr M had transferred to the Rowanmoor SSAS in 2018. Also that Mr M had complained separately about Rowanmoor’s actions to the Pensions Ombudsman. On learning about that Scottish Widows withdrew its offer to reinstate his pension. It did so, in part, because it noted that Mr M’s funds had sat in cash, so the threat of pension liberation it had intended to guard against by refusing the transfer hadn't materialised despite its mistake. And it didn't think it was responsible for the losses Mr M had suffered because his funds had sat in cash.

Mr M brought his complaint to us. One of our Investigators looked into it. She noted that Scottish Widows had accepted that it hadn't handled matters fairly and that the sticking point now was the manner in which to put things right. She said that in order to do so Scottish Widows should calculate how much Mr M’s Scottish Widows pension would have been worth – had he remained in it – at the point that he transferred his Liddell Dunbar pension to Company H’s SSAS. She said that if that figure was higher than the amount Mr M transferred then Mr M had suffered a loss which she said Scottish Widows should compensate him for.

Scottish Widows accepted our Investigator’s complaint assessment. However, Mr M did not. He told us about a number of other costs and charges, which I explain below, which he felt Scottish Widows should also compensate him for.

Scottish Widows didn't agree to compensate Mr M further. So, as the matter remains unresolved it's been passed to me to decide.

Provisional decision and developments

I issued a provisional decision on 30 January 2025 explaining why I intended to uphold Mr M’s complaint. I set out how Scottish Widows should put things right

Both Mr M and Scottish Widows accepted my key findings on the merits of Mr M's complaint. However, Mr M via his representatives noted that I had said that any deductions from Mr M’s Liddell Dunbar pension should be deducted from the notional value (which I explain below) when calculating redress. Mr M said that a number of those deductions were for Liddell Dunbar’s fees/costs he wouldn't have incurred if he’d remained in his Scottish Widows pension. After considering this carefully, I agreed with Mr M on this point. So, we explained to Scottish Widows, in emails of 10 and 14 February 2025, that I did not think it would be fair for Scottish Widows to deduct sums paid for fees when calculating the notional value. I have referred to that further below.

As neither party has objected to my provisional findings on the merits of Mr M’s complaint I see no reason to alter those. So, save for where I have amended the redress instructions, I have repeated my provisional findings below, as my 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.

While doing so I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

What do I need to decide upon?

The crux of Mr M's complaint is not disputed by either party. Mr M complained, in essence, that because Scottish Widows' due diligence process wasn't robust the transfer went ahead when it shouldn't have done so. Scottish Widows agrees that its due diligence requirements were not met. It said that an administration error led to the transfer taking place and but for that error that wouldn't have happened.

So as both parties are fundamentally agreed about the substance of the complaint issue I don't intend to set out in detail the relevant rules and guidance that I would usually apply to a complaint about a due diligence process. Similarly I don't intend to set out in detail what I believe Scottish Widows ought to have done, against what it actually did. Instead what I now need to decide is what I think is fair and reasonable for Scottish Widows to do in order to put things right.

What other matters do I need to consider and what conclusions have I drawn?

As I set out below there are a number of complicating factors in this case.

Mr M also transferred his pensions from Provider S to Company H's SSAS administered by Rowanmoor. Mr M also complained about Provider S's actions and one of my Ombudsman colleagues upheld that complaint and instructed Provider S on how it should put things right in respect of it. So I don't need to comment on Provider S's actions.

However, the events that unfolded regarding that transfer, the subsequent complaint and what we learned while investigating it, also have a bearing on my considerations in respect of what I think Scottish Widows should do to put things right here. So I think it would be helpful if I set out a little bit more detail of the circumstances that led to Mr M transferring his pension.

When considering the complaint against Provider S my colleague spoke with Mr M as well as his representatives. I've listened to those calls. I've also read the entire file.

Mr M explained that he didn't have a particularly clear memory of events. That's understandable given the passage of time. Also he suffered a – no doubt devastating – bereavement during the process, which is likely to have clouded his memory of other events which may well have paled into insignificance (at that time) in comparison with the impact of the death of a loved one.

However, Mr M told us that he believes the transfer process began when someone, who he thinks might have been his mortgage or insurance adviser, had suggested he might benefit from talking to an individual – I'll call AM – about his pensions. Mr M told us that he wasn't well-versed with pension or investment matters at that time.

Mr M met with AM more than once, with AM also visiting him at home. AM told Mr M that he was a financial adviser and recommended investments which, he said, would generate around 8% growth per year investing in storage pods and parking spaces.

AM was not authorised by the FCA to give financial advice. But there's persuasive evidence that it was AM that made the initial suggestion that Mr M should set up Company T and transfer his personal pension funds to an occupational pension provided by Liddell Dunbar. I say that as it's notable that Company T was incorporated before Mr M signed a service agreement with Liddell Dunbar when he contracted to pay fees for its services. So the sponsoring employer for the occupational pension existed seemingly prior to Mr M formalising his relationship with Liddell Dunbar.

It seems likely therefore that, at the time that Scottish Widows transferred Mr M's pension, in July 2014, the intention was not to leave the funds sitting in cash. Instead Mr M, as guided by AM was intending to use those funds alongside the transferred money from Provider S's pensions to invest in the Group First schemes.

I will explain that the Group First opportunities involved buying small parcels of land housing storage pods and parking spaces. Doing so involved the requirement for the titles for those properties to be appropriately registered with Land Registry. And that required the input of solicitors, who would charge a fee for their services.

In addition the Group First investments usually came at a significant cost for each individual parking space or storage pod the investor bought. It wasn't, as far as I'm aware, possible to only partially invest in a parking space or pod.

So, I think it's more likely than not that AM felt it would be pragmatic to await the completion of Provider S's transfers so that all of the funds could be invested at the same time, in the appropriate amount of parking spaces or pods that would – on paper – attract the highest returns. In addition that strategy would presumably have meant less paperwork and the requirement to only instruct solicitors once, rather than making an initial investment when the Scottish Widows transfer completed and as second one when Provider S made the transfer. That would most likely have involved two sets of paperwork and two lots of solicitors' fees.

However, as we now know, AM's plan for Mr M did not go smoothly. AM and Liddell Dunbar were unable to persuade Provider S to transfer Mr M's pensions to Liddell Dunbar. These were the majority, over 83%, of his personal pension provision at the time. So, it appears AM devised the alternate plan of setting up Company H and a SSAS provided by Rowanmoor. That transfer went through with the minimum of fuss. Mr M, as guided by AM, then used those funds to invest in the Group First companies.

This left around £20,600 sitting in Mr M's Liddell Dunbar pension account. Mr M couldn't clearly remember why he didn't invest those funds but told us that Liddell Dunbar advised him that this was the "best thing to do". As I've said above, initially at least, it's likely the parties left the funds untouched as they were expecting to make the relevant investment once Provider S's funds arrived. After that didn't happen, there was no clear advantage for Mr M, as far as I can see, to him leaving his funds in cash. However, had Mr M chosen to transfer those monies to his recently established SSAS Liddell Dunbar would no longer be able to charge him fees. So, as far as I can see, the only party that gained an advantage from Mr M leaving his funds in cash was Liddell Dunbar.

In June 2015, Mr M withdrew around £10,750 from the M Scheme principally to pay an HMRC tax bill (which was unrelated to the M Scheme) and for some building work for his actively trading business. He said that before doing so he spoke with Liddell Dunbar who told him that as long as the funds were for business purposes that this would be OK. Around a year later in July 2016, he withdrew a further £7,000 also to pay a tax bill.

In January 2018 HMRC sent Mr M an “Information Notice” requesting some details about the M Scheme. It sent similar notices to other Liddell Dunbar clients in a comparable position to Mr M. Mr M didn't respond to the Information Notice as he was acting on the advice of Liddell Dunbar who had instructed a firm of tax experts, which I’ll refer to as Firm I, to advise on the matter.

Mr M’s account is that Liddell Dunbar also told him – at that point – that he shouldn't have withdrawn funds from the M Scheme. He said that Liddell Dunbar advised him to replace any funds he’d taken out of the scheme. By that time, including Liddell Dunbar’s fees, a total of £19,245 had been paid out of the scheme. Mr M said he took out a loan to repay that sum, which he repaid to the scheme on 30 January 2018.

I understand HMRC imposed penalties on Mr M – and other Liddell Dunbar clients in similar positions – on at least three or four separate occasions for not responding to Information Notices. In Mr M’s case those penalties totalled some £20,250. Mr M eventually appealed the penalties. Firm I represented Liddell Dunbar’s former clients concerning the penalties. Mr M told us, via his representatives, that he had paid Firm I fees of £8,820 for dealing with the matter.

In March 2024 Mr M’s representatives told us that Firm I had successfully handled the appeal and that HMRC was no longer imposing penalties. We asked Mr M for evidence to confirm that position. To date Mr M said that HMRC has not provided this.

Mr M provided an email from Firm I dated 16 January 2024. This said that HMRC had indicated during the tax tribunal hearing the appeals, that HMRC would be closing the matter without raising any tax assessments or further charges. But my reading of the email was not that Firm I had won the appeal. Instead I understand that the tribunal judge concerned had not at that point given a ruling on whether the penalties HMRC had imposed for refusing to answer the Information Notices should still be applied. So that matter remained outstanding.

<u>Should I hold Scottish Widows responsible for any additional charges, losses or penalties resulting from the transfer?</u>

As I've said above it’s evident that at the time that Mr M transferred his Scottish Widows pension his intention was to invest in the Group First companies. It was not his intention to ‘liberate’ his pension. That is he did not intend to take unauthorised payments from it as he was not yet 55 years of age. And as the Scorpion campaign highlighted at the time, taking such unauthorised payments can result in significant tax charges.

In fact Scottish Widows went some way to warn Mr M about the risks of pension liberation: sending him both the Scorpion leaflet and also a link to HMRC’s website dealing specifically with the tax charges that applied in those circumstances. Mr M told us he didn't recall receiving the Scorpion leaflet. But over ten years had elapsed between Scottish Widows sending it to him and him discussing the matter with one of my colleagues. And my colleague concluded that it was likely that Mr M did receive this information but simply didn't recall it. I agree with that analysis.

This is relevant as Mr M’s situation changed in June 2015. It appears he received a significant tax bill (which was related to his actively trading business and unrelated to his SSAS or its sponsoring employer) and also wanted to do some work on his business premises. Mr M’s account is that he spoke with Liddell Dunbar who told him that, as long as he used his pension funds for business purposes, he could withdraw the required funds from his Liddell Dunbar occupational pension.

If that was the advice Liddell Dunbar gave then it would appear to be flawed. As far as I'm aware, as Mr M was still under 55 years old at the time, such a withdrawal could be seen as an unauthorised payment which could attract heavy taxation. Mr M followed a similar pattern in 2016, when he withdrew a further sum. But, by that time, there was simply nothing Scottish Widows could do to change Mr M’s course of action here.

It seems that the potential pitfalls of Mr M’s actions only came to light when HMRC began investigating a number of Liddell Dunbar pensions in 2018. This led to Mr M taking out a loan, paying fees to Firm I and potentially paying penalties to HMRC. So I've thought about whether its fair and reasonable to attribute those costs to Scottish Widows mistake in transferring the funds in 2014.

I have no doubt from Mr M’s – and his representatives’ – perspective Scottish Widows is ultimately responsible for any additional costs. That's because the usual argument would be that if Scottish Widows had done everything it should have Mr M wouldn't have transferred. So he couldn’t have made the withdrawals from the Liddell Dunbar pension or incurred any additional costs as a result.

But in the specific circumstances of this case I don't think that would be fair. I think that Mr M’s circumstances had changed between the time when Scottish Widows made the transfer and his decision to make withdrawals from his Liddell Dunbar pension. And I don't think, in the specific circumstances of this case, it would be fair to hold Scottish Widows responsible for every action Mr M took, in perpetuity, regarding the transferred funds.

At the time Mr M had no intention of liberating his pension funds. And Scottish Widows did give him appropriate warnings about the perils of doing that: sending the Scorpion leaflet and a link to HMRC’s website. It was around a year after the transfer had concluded that Mr M decided to withdraw funds from his Liddell Dunbar pension. That was something that he'd’ been warned not to do in the information Scottish Widows had sent to him. But Mr M went ahead and did it anyway. I don't think it’s fair to hold Scottish Widows responsible for Mr M’s actions here.

Further, in 2018 Mr M said he took out a loan for the full amount his Liddell Dunbar fund had been depleted by in the interim. He says he did so on the basis of advice from Liddell Dunbar. But, while I can understand why he would be concerned that he could face a significant tax bill for any unauthorised withdrawals, this wasn’t something he necessarily needed to do at that time. Indeed, I don't think it was an action likely to have been of any benefit to him.

I say the above because, as far as I'm aware, HMRC hasn't ever presented Mr M with a tax bill for the withdrawals he made. Also, my understanding is that HMRC charge tax for the unauthorised withdrawals of pension funds early, not specifically for reducing the sum in a pension. And, by the time Mr M decided to repay the pension he had already had the benefit of the money he’d withdrawn. That is he’d used those to pay two tax bills and for some building work.

So it seems likely that, if HMRC had decided these were unauthorised withdrawals then it would have applied the relevant tax charge regardless of whether or not Mr M had repaid those sums into his pension. That is the pension had essentially loaned him the money and he repaid it, but those would still be unauthorised withdrawals. So I don't think that repaying those sums by way of a loan would necessarily protect Mr M from an HMRC tax charge. It follows that any interest he had to pay on the sum repaid is not because of anything Scottish Widows did or didn't do.

Further, I note that Mr M didn't take out a loan simply for the amounts he withdrew to pay tax bills and building work. He seems to have also repaid sums that went to pay Liddell Dunbar for its services. But, as far as I'm aware, the payment of administrators' or providers' fees from a pension is something that HMRC rules allow. So I don't think HMRC would ever have considered those payments to be unauthorised. Therefore, Mr M had no real reason to repay those sums.

Essentially, I think Mr M's decisions to use pension funds for tax bills and other purposes was too remote from Scottish Widows' mistake in transferring the funds to Liddell Dunbar to hold Scottish Widows responsible for the implications of those actions. As I've already said Scottish Widows had given him information at the time which contained clear warnings about the danger of taking that action.

I'm aware that Mr M also incurred charges for instructing Firm I. I haven't seen the basis for that instruction. But I note that Firm I's invoices which Mr M has shown to us indicate that it has billed him for 'litigation'. This would appear to be the conduct of appeals to the tax tribunal about the imposition of penalties. However, as far as I can determine, HMRC did not apply the penalties in respect of unauthorised payments. Instead it seems HMRC applied those as Mr M – as advised by Firm I – refused to comply with its requests for information. That refusal led to the penalties and the subsequent litigation which Firm I has apparently charged Mr M for.

I'm not a specialist in tax affairs and I'm not in a position to comment on the appropriateness or otherwise of Firm I's advice to Mr M. Firm I is an ongoing concern which may still be providing services for Mr M. But, if it transpired that Mr M only received HMRC penalties because he was acting on the basis of Firm I's advice, or that he only incurred litigation costs because of that advice, then his route to challenge those would be to complain to Firm I. And as I'm satisfied that these charges and penalties did not arise as a direct result of Scottish Widows actions it would not be fair to apportion those costs to it.

<u>What should Scottish Widows be responsible for?</u>

As I've said above in the specific circumstances of this complaint I don't think Scottish Widows should be responsible for the additional costs Mr M incurred because he chose to take withdrawals from his pension. However, it's not in question that Scottish Widows made a mistake when it did. And if it wasn't for that mistake Mr M's pension wouldn't have transferred to Liddell Dunbar when it did. So I need to think about what the likely consequences for Mr M were because of that mistake.

However, I can't simply turn back the clock and let matters run their course. And, as we know, Mr M decided to transfer provider S's pension to Rowanmoor in December 2014. But I can't be certain that he would have done the same thing with his Scottish Widows pension, had it not already transferred to Liddell Dunbar.

I say the above as I think there are simply too many hypothetical questions to make a fairly reasoned conclusion. For example, it could be possible that Rowanmoor would have submitted a transfer request via Origo which Scottish Widows chose to do no due diligence on. But, given that it already had concerns about the transfer, it may have applied enhanced due diligence to any request for one. And, assuming it had, I can't know precisely what questions it would have asked or what answers it would have received to those extra due diligence enquiries. And in those circumstances I don't think I can fairly and reasonably unpick or envisage exactly what would have happened if Mr M's pension fund had not moved to Liddell Dunbar.

However, what I do know for certain is that Scottish Widows made a transfer of Mr M's funds to Liddell Dunbar when it accepts it shouldn't have done so. And thereafter those funds remained in cash – save for the amount Mr M withdrew and then repaid – until he transferred the funds to Rowanmoor in 2018. Had the funds remained with Scottish Widows they would have benefited from the investment growth of the Scottish Widows pension. But, he lost that growth because of the mistaken transfer. And in those circumstances I think it's fair and reasonable for Scottish Widows to compensate Mr M for the investment losses while his funds were held by Liddell Dunbar, even though I don't think Scottish Widows is responsible for his other losses.

I note that Mr M transferred the pension funds from Liddell Dunbar's pension to his SSAS in 2018. It's not clear whether Mr M took advice on whether or not to take that action or what motivated him to do so. Mr M's representatives said he did so because he remained under the influence of his previous advisers. But he could have, if he so wished, taken out a new personal pension similar to the Scottish Widows one he transferred out of. And I don't think any losses to Mr M's pension from that point forward is attributable to the action of Scottish Widows.

It follows that, in order to treat Mr M fairly I think Scottish Widows should calculate if he suffered an investment loss from his Scottish Widows pension from the date it was transferred to the date he transferred the remaining funds to his SSAS. I've set out below how Scottish Widows should go about that.

Putting things right

Fair compensation

To compensate Mr M fairly, Scottish Widows should subtract the actual value of the Liddell Dunbar Pension at the date of the further transfer to Rowanmoor's SSAS, from the notional value if those funds had remained with Scottish Widows until the same date. If the notional value is greater than the actual value, there is a loss. Scottish Widows should then adjust that loss up to the date of calculation as set out below.

Actual value

This means the value of the Liddell Dunbar Pension at the date of the further transfer to Rowanmoor's SSAS.

Notional value

This is the value of Mr M's funds had he remained invested with Scottish Widows up to the date of the further transfer to Rowanmoor's SSAS.

Withdrawals Mr M made from the Liddell Dunbar pension to pay HMRC tax bills or for buiding work should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. I understand those include:

Amount	date withdrawn
£10,750	18 June 2015
£ 7,000	1 July 2016

However, the following withdrawals should not be deducted:

36 Monthly charges of £7.50

Amount	date withdrawn
£600	19 October 2015
£600	18 October 2016
£50	1 November 2017
£50	1 December 2017

Three further deductions of £50 between December 2017 and March 2018 and three further payments of £7.50 in the same period.

Any additional sum paid into the Liddell Dunbar pension should be added to the notional value calculation from the point in time when it was actually paid in. That would include the £19,245 Mr M paid into his Liddell Dunbar account on 30 January 2018.

Payment of compensation

The loss established at the date of the transfer out to Rowanmoor's SSAS should be adjusted up to the date of calculation in line with further changes in the notional value of the funds Mr M originally held with Scottish Widows.

Scottish Widows should pay the amount of any loss direct to Mr M. But if this money had been in a pension, it would have provided a taxable income during retirement. Therefore compensation paid in this way should be notionally reduced to allow for Mr M's marginal rate of income tax now that he is retired. (This is an adjustment to ensure that Mr M isn't overcompensated – it's not an actual payment of tax to HMRC.)

Mr M is already retired so he should provide Scottish Widows with evidence of his marginal tax rate and make the appropriate deduction. So, if the loss represents further 'uncrystallised' funds from which Mr M was yet to take his 25% tax-free cash, and he is a basic rate income tax payer, then only the remaining 75% portion would be taxed at 20%. This results in an overall reduction of 15%, which should be applied to the compensation amount if it's paid direct to him in cash. If Mr M is a higher rate tax payer then an overall reduction of 30% would be applicable.

Alternatively, if the loss represents further 'crystallised' funds from which Mr M had already taken his 25% tax-free cash, the full 20% or 40% – as appropriate – reduction should be applied to the compensation amount if it's paid direct to him in cash.

If payment of compensation is not made within 28 days of Scottish Widows receiving Mr M's acceptance of the Final Decision, interest must be added to the compensation at the rate of 8% per year simple from the date of the Final Decision to the date of payment.

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

Details of the calculation must be provided to Mr M in a clear, simple format.

My final decision

For the reasons given above I uphold this complaint. I require Scottish Widows Limited to take the steps set out under the heading ‘putting things right’ above and as set out in my colleague’s emails to it of 10 February and 14 February 2025.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 24 March 2025.

Joe Scott
Ombudsman