

## The complaint

Mr J complains that Scottish Widows Limited didn't treat him fairly when it closed the range of funds in which his self-invested personal pension (SIPP) invested.

## What happened

Mr J's SIPP with James Hay contains an insurance policy which is commonly known as a Trustee Investment Plan (TIP). The policy sets out that the trustees of the pension scheme will pay premiums in exchange for benefits specified under the policy.

The TIP only allowed investment in a Scottish Widows fund range known as the Pension Management Funds ("the Funds"). I understand that the TIP was set up to receive an in specie transfer of units in the Managed Fund ("the Fund") already held for Mr J's benefit under a company pension scheme which Mr J transferred into the SIPP in 2001.

During early 2023 Scottish Widows was considering closing down the Funds, using the assistance of a third party (Mercer). Mercer informed James Hay (on Scottish Widows' behalf) of this in February 2023.

In April 2023 Scottish Widows issued a letter to its policyholder (James Hay) explaining that a total of £501,304 was held in the Fund which it intended to discontinue after 31 December that year. This would result in Scottish Widows returning the monies to the SIPP and closing the insurance policy.

This letter was passed on to Mr J by James Hay in May 2023. I understand a further reminder was sent to James Hay in August 2023 which Mr J may or may not have seen.

On 22 November 2023 Mr J says that he spoke to the Fund's manager (Schroders), who assured him that if the Fund were to be wound up all unit holders would be treated equally. As a result, he requested the sale of his units.

On 18 December 2023 Scottish Widows paid £525,191 back into Mr J's SIPP.

In January 2024 Mr J became aware that the Fund hadn't been closed on 31 December 2023, it still contained other unit holders' investments, and was apparently open to new investment.

On 13 February 2024 Mr J raised his concerns with Mercer, believing them to be the appropriate respondent due to their involvement in the closure process. His complaint was passed to Scottish Widows who responded on 28 March 2024. Scottish Widows explained to Mr J that it only closed access to the Fund *for his type of product* with effect from 31 December 2023. It added that it would only deal with James Hay directly on this matter.

On 2 April 2024 Mr J asked James Hay to complain to Scottish Widows on his behalf, which it did. Scottish Widows responded on 3 May 2024 making the following points:

- The Funds had already been closed to new business as of 31 December 2016.

- Had Mr J's investment remained in the Fund it would have been sold on 31 December 2023. No alternative funds would then have been available under Mr J's policy.
- Scottish Widows did not assert that the Fund itself would be wound up on 31 December 2023.
- It was currently *"progressing through the exiting of policies which had invested in the Fund range"*. This was taking place in a phased manner due to practical needs.
- The stamp duty and dealing fees Mr J had incurred were part of the natural costs of reinvesting.

Mr J observed that the value of units in the Fund had increased by 11% between 18 December 2023 (when he exited it) and 13 May 2024. He considers he has forgone a gain of some £50,000, so has been discriminated against and treated unfairly as there is only one class of units in the Fund. At age 78 and without a financial adviser he has found the whole process extremely stressful and distressing, and seeks £25,000 compensation.

When Mr J referred the complaint to our service, Scottish Widows said we couldn't consider it because:

- Mr J was not its customer and so was not an eligible complainant;
- James Hay (as its customer) had too high a turnover and/or staff count to be considered a 'microenterprise' and thus able to complain to our service.

Our Investigator has explained to Scottish Widows why he considers Mr J is nonetheless an eligible complainant. As Scottish Widows agreed with the Investigator's view, the remaining issue in dispute is about the merits of the complaint. But I'll just recap what the Investigator said about jurisdiction here.

### Jurisdiction

DISP 2.7.3R and DISP 2.7.6R in the Dispute Resolution section of the Financial Conduct Authority (FCA) handbook provides that, in part, a consumer is eligible to complain to our service *"if they have a complaint which arises from matters relevant to one or more of the following relationships with the respondent"*. There then follows a list of different types of relationships.

Even if Scottish Widows was correct that Mr J was not its customer or potential customer, because James Hay actually owned the assets in the TIP as trustee (relationship 1), our Investigator pointed out that relationship 4 *"the complainant is a beneficiary of, or has a beneficial interest in, a personal pension scheme or stakeholder pension scheme"* would apply. That was because Mr J was the member beneficiary of the SIPP of which James Hay was trustee.

The wording of DISP 2.7.6R(4) was clear that the ability to complain wasn't restricted to a SIPP member against a SIPP provider – the 'customer' relationship in DISP 2.7.6R(1) already provided for that, so in that event there would be no purpose to DISP 2.7.6R(4). This didn't mean that anyone who was a beneficiary of a SIPP could complain to any respondent, regardless of the activity they were complaining about: the complaint would have to *"arise from matters relevant to"* them being the beneficiary. But as the FCA noted when introducing this provision (numbered DISP 2.4.12R before April 2007) in Consultation Paper 06/5 (section 8.26):

*"Under the rules, the member or beneficiary may in some circumstances be a customer of the firm or have an indirect customer relationship. We propose to amend DISP to make it clear that members or beneficiaries can complain to the FOS about advice given to the persons operating or winding up a personal pension scheme... This rule change*

*would also enable the member or beneficiary to complain to the FOS in certain circumstances in relation to a product provider who provided an investment to the trustee or operator for investment in the scheme.”*

Clearly it was already in contemplation when the FCA introduced this rule, and evident from the drafting of the rule itself, that the beneficiary of a personal pension could complain to those providing investments to the personal pension trustee. On that basis the Investigator concluded that Mr J was an eligible complainant. And that as a result, it was irrelevant whether James Hay could also have brought this complaint.

### Merits

On the merits of the complaint, our Investigator explained to Mr J that:

- Scottish Widows had explained that a statement on its website suggesting that the Funds remained open to investment was out of date and would be corrected as part of the eventual winding up.
- It was staggering the disinvestment from the Fund according to the type of pension product that contained the TIP. Only investors via final salary pension schemes had a later disinvestment date, because Scottish Widows was also the administrator of the schemes themselves and more complex arrangements were involved.
- Scottish Widows explained that the staggered approach was in order to enable an orderly exit of customers from the Funds across the different products it held.
- We do not have the power to force a business to (continue to) offer its products to specific groups of investors as that is a decision for the business to make.
- The letters Scottish Widows sent to James Hay did state that they were specifically about the (numbered) policy and did not impact any other policies the recipient may hold with Scottish Widows.
- Mr J's TIP was being treated equally to all other investors in similar circumstances, which wasn't unfair.

Mr J didn't agree with the Investigator. He explained:

- There is only one unit class in the Fund. At no point did Scottish Widows advise him that his holding would be treated less favourably than those of other unit holders.
- This is no different from a company with one share class where, upon winding up, all shareholders would receive the same value for each share.
- The FCA's handbook requires that where a regulated firm proposes to wind up an investment product with only one class of unit, the Fund should be liquidated and the cash proceeds distributed to all unit holders at the same unit valuation.

As agreement couldn't be reached on the merits of the complaint, it has been passed to me for a 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.

But firstly, I'll comment briefly on the jurisdiction issue.

### Jurisdiction

As highlighted above, Scottish Widows accepted our investigator's view, so I've proceeded on the basis that our jurisdiction to consider Mr J's complaint isn't in dispute. However, for completeness and in avoidance of any doubt I agree with the investigator's findings in

respect of jurisdiction and am satisfied that Mr J is an eligible complainant. I also note that in addition to DISP 2.7.6(4), DISP 2.7.6R(5) provides another relationship from which Mr J's complaint arises:

*“(5) the complainant is a person for whose benefit a contract of insurance was taken out or was intended to be taken out with or through the respondent;”*

This is because the TIP is an insurance policy. And it would be consistent with the approach the Financial Ombudsman Service takes where an insurance policy has been taken out to benefit a member of certain contract-based pension schemes such as an Executive Pension Plan or an Additional Voluntary Contribution contract.

Irrespective of this, I also agree with the findings the Investigator has already made.

### Merits

Given that James Hay was asked to seek an alternative investment for Mr J's holding in the Fund, I understand why Mr J was concerned to see that the Fund was still displayed on Scottish Widows' website as being open for investment, and reporting a unit price and (albeit reduced) size.

Firstly, Scottish Widows has explained that references on its website to the Fund (or any of the Funds) accepting new investment is an error, as they have been closed to new business since 31 December 2016. Had any investor tried to add funds, its internal processes would have prevented this as they are marked as closed.

I appreciate that mistakes can happen with the information provided and I have no reason to doubt what Scottish Widows is saying is correct. Nor has Mr J provided any evidence of anyone successfully being able to add money to the Fund after he left it (or after 31 December 2016).

I realise what appears to be a mistake on the website might have fuelled Mr J's suspicion that his SIPP was being treated differently to other investors who held money in the Fund. There is some basis for this. He *is* being treated differently in one respect: if his money had been in a final salary pension scheme, the trustees of that scheme would have been given longer to exit the Fund, as part of what appears to be a wider move by Scottish Widows to wind down its administration of this type of scheme.

Mr J claims that the FCA's rules don't permit it to leave some investors in the Fund whilst forcing others to leave it, because they all hold the same class of unit. I'm required to take into account a number of factors, including the regulator's rules and guidance, and what I consider to have been good industry practice at the relevant time, in order to reach a decision that is fair and reasonable in the circumstances of this particular case.

The regulator's rules seek to ensure that the interests of one group of investors in the Fund is not placed above another, and this is essentially part of the wider regulatory obligation on any firm to treat customers fairly, and to act in all of its clients' collective best interest. And I find that Scottish Widows was seeking to do that in the circumstances of this case.

Closing a range of Funds that are the sole constituent of a variety of policies Scottish Widows issues itself is a process that needs to be managed carefully, and I'm not surprised that Scottish Widows found it necessary to stagger the exit of funds in tranches, as assets will need to be sold to pay for those redemptions. There is a reasonable business case for Scottish Widows to balance out the work involved to sell assets in the Funds at the best prices it can achieve over a period of time. After all, it is the manager of the Funds and has

obligations to the FCA, in the way those funds are managed, to act in the clients' best interests overall.

In order for Scottish Widows to act fairly here, there needed to be an objective basis for saying which investors would need to leave the Fund by which date. I'm not persuaded that Scottish Widows has acted inappropriately in providing all investors holding the TIP within schemes like Mr J's SIPP with one disinvestment date, and the final salary scheme investors a different date – because everyone with that type of pension arrangement – or in a comparable position – is being treated the same. I think this represents a reasonable trade off between the practicalities of ensuring the Fund could be closed down in an orderly fashion, and avoiding an entirely arbitrary staggering of closure dates.

I appreciate the strength of Mr J's feeling on this issue as, whilst the Fund is held within different products, he says that there is only one unit class. But I think that misses the point that this is a daily-priced, unit linked fund. So he is getting his fair share of the assets in the Fund whenever it is valued. This is not evidence that he is being treated unfairly or discriminated against.

I don't know exactly what Schroder told Mr J (and Schroder is not the respondent to this complaint). However, I don't think it would have been wrong to say that everyone exiting the Fund was being treated the same in terms of them being given their fair share of the assets (via the unit price) on the date they left it, whenever that date was. In other words, no favourable treatment was being given to particular unit holders by virtue of them remaining in the Fund for longer, given that market performance could not be predicted.

The fact that the Fund has performed strongly since that point isn't in my view evidence of unfairness, and doesn't suggest that the strong performance has resulted from other investors leaving the Fund. Its performance was at the mercy of the markets and clearly it could have turned out differently. Whether Mr J was better off exiting the Fund in December 2023, rather than such later point as the Fund was fully wound up, can only be seen with hindsight. What remains the case is that Scottish Widows was always entitled to take a commercial decision to close the Fund, and so at some point Mr J was always going to incur the costs of reinvesting.

The exact day Mr J chose to leave was a matter for him to decide, based on the notification that everyone holding one of these TIPs in a SIPP would have to leave by 31 December 2023. So Mr J was put in the same position as other SIPP investors in being able to make his own judgement about what alternative funds to invest in and when, subject to the relevant deadline. I say this noting that the notification was provided to the owner of the units (the pension scheme trustee) in all cases and it was a matter for them to pass this on to the underlying beneficiary. I appreciate Mr J doesn't have a financial adviser and found these matters difficult to navigate, but that doesn't mean that Scottish Widows' decision to close the Fund or the way it proceeded was unfair or unreasonable under the circumstances.

It's also worth noting that the long notice period that Scottish Widows gave of the closure of the Funds would have meant that different investors with Mr J's type of scheme exited over a range of dates, potentially from the first announcement in February 2023 onwards. With each investor reaching their own decision as to timings, given they now knew the Fund was positioning itself to wind up. This likely made it easier for Scottish Widows to ensure that it managed the assets in the Fund in the interests of all investors, as there would be a steadier stream of assets being sold. Staggering the announcements to different categories of investor was a further mechanism to assist with this process.

I'm not persuaded it can be evidenced that Mr J didn't obtain his fair share of the assets held in the Fund at the point he left it. So as a result, I can't reasonably say that Scottish Widows

has treated him unfairly in this particular case.

**My final decision**

I do not uphold Mr J's complaint and make no award.

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

Gideon Moore  
**Ombudsman**