

The complaint

Mr X says Scottish Widows Limited changed the terms and conditions of his group personal pension without informing him. He says this has caused him financial detriment and stress.

What happened

Mr X's pension with Scottish Widows was set up by a previous employer (Y). Regular contributions started in October 2013 and these ran until April 2017. Mr X left Y but further single premium payments were made into his plan from March 2022. These were through an umbrella company, effectively his new employer.

Presumably because Mr X hadn't notified Scottish Widows of any change to his employment circumstances, it treated the payments into his pension plan from March 2022 as being made by a third party. This worked fine until November 2023 when payments were returned.

After enquiring about what had happened in January 2024, Mr X was informed by Scottish Widows that changes to the terms and conditions of his plan meant that with effect from November 2023 it could no longer accept third party pension contributions. It was also too late at that point for him to complete a change of employer notification.

Scottish Widows provided template letters it said it had sent to policy holders in August 2020 which made clear it would no longer accept third party contributions as part of changes it was making to the terms and conditions of his pension plan. It says it followed this up with further notifications in September 2022 and February 2023.

Mr X says he never received the communication from August 2020, and that any subsequent letters he did receive were insufficient to put him on notice about the changes that were significant to him in his circumstances. He raised a complaint.

Scottish Widows considered Mr X's complaint and provided a final response to him on 6 February 2024. It agreed it had got things wrong, specifically it accepted that its letter of February 2023 failed to state that once his policy migrated it wouldn't be able to accept third party contributions. It offered him £50 for the trouble and upset it had caused.

Mr X brought his case to this Service. An Investigator considered his complaint and although following her intervention Scottish Widows decided to increase its offer for trouble and upset to £150, she concluded that it had otherwise acted fairly. She considered the firm was able to make changes to its terms and conditions and that it had given him proper notice. Mr X rejected the Investigator's conclusion, he said he hadn't received explicit notification from Scottish Widows about the changes it was making which impacted him.

As both parties couldn't agree with the Investigator's view, Mr X's complaint has been passed to me to review afresh. I issued my provisional decision in May. Both parties agreed with my findings and conclusions but further clarifications were sought on the redress I proposed, this has since been provided.

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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr X's complaint. I'll explain why.

I've considered the extensive regulation around the services like those performed by Scottish Widows for Mr X. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr X's complaint.

My starting point is Scottish Widows letter to policy holders of 20 August 2020. This was referred to on more than one occasion by the firm and appears to be a good piece of evidence that it made its customers aware of the specific change that impacted Mr X – that it would no longer be possible to receive contributions from third parties.

The letter is clear. The title, in large, capital and red font reads:

“Additional contributions from other employers can no longer be accepted – please speak to them about this.”

Mr X says he never received the August 2020 correspondence. And I think he has a strong argument here. I say this because the first two bullets of the letter make it clear who it is addressed to. These say:

“You currently have additional contributions made to your pension plan by an employer other than the employer whose scheme you are in.”

“From 14th December 2020, those contributions can no longer be accepted. Please contact the employer who makes these additional contributions to explain that we'll stop collecting them.”

It is clear Scottish Widows letter was targeted at specific customers with information relevant to them – as you'd expect. The problem for the firm is at the time it wasn't relevant to Mr X. It didn't know he had a new employer and there was a hiatus in contributions to his plan between 2017 and 2022.

On balance I don't think Scottish Widows sent Mr X the August 2020 letter.

Scottish Widows has provided two further template letters. It hasn't been clear about which it sent to Mr X. In its final response to him it indicated it sent Mr X a letter in February 2023 letting him know about the migration of his policy. In responding to this Service, it told us it sent him an 'intent to change' letter in September 2022 and a confirmation of change letter in February 2024.

I've reviewed the two template letters provided by Scottish Widows.

The first letter titled 'We're making changes to your workplace pension plan' is presumably what the firm calls its intent to change letter. I note that the top bullet points noted enhancements & changes being made to pension plans in the coming year; and it said recipients didn't need to do anything as the changes would happen automatically. It went on to summarise the main changes, but there was nothing about ending the acceptance of third party contributions.

The second letter was titled 'We've completed changes to your workplace pension plan'. As Scottish Widows indicates this letter was sent in February 2024, this would've been after it had effected the changes to Mr X's policy in November 2023 and after he'd raised a complaint about what had happened.

In concluding her initial view, the Investigator said:

"When a business does decide to amend the terms of a plan, we would expect them to provide notice of changes in their terms. In this case, SW made you were they would no longer accept third party contributions and that your scheme would be migrating to a new system, so I can't say SW have done anything wrong."

I agree with the Investigator when she finds that a firm must retain the right to amend the terms on which it conducts business. And that we'd expect it to make its customers aware when it was going to change things so that they had the opportunity to take any necessary action. The problem for Scottish Widows based on the evidence I've seen is that it failed to provide Mr X with the information he needed in a clear and fair manner.

As Mr X acknowledges, had he received the very clear letter of August 2020 from Scottish Widows then he'd have been effectively put on notice of the changes. But for the reasons I've set out, I don't think he was sent that letter or a later similar letter containing the explicit notification about third party pension contributions that was important to him.

I've concluded Scottish Widows failed to provide Mr X with clear and fair information about changes it was making to his pension plan. And I do think this caused him financial detriment. It follows I'm upholding Mr X's complaint.

Putting things right

I'm upholding Mr X's complaint, so he needs to be returned to the position he'd have been in now, or as close to that as reasonably possible, had it not been for Scottish Widows Limited's failings.

Had Mr X been made aware his pension plan would no longer be able to accept third party contributions, at that point I think he'd have completed a change of employer form. Scottish Widows told us:

"...Had the COE form been completed prior to the migration we would have changed the plan contract to a Personal Pension Plan, and it would not have migrated at all."

As it was still part of the original scheme at the planned migration date for the scheme, it moved with the rest of the active members.'

Scottish Widows is confirming had Mr X been able to carry out a simple administrative task then the problems he's experienced would've been averted and he could've continued to receive contributions from his new employer.

I should make clear, I don't think this means Mr X is entitled to compensation covering his pension contributions up until the current date. I say this because when someone has knowledge of a potential problem then I'd expect them to take action to mitigate potential losses.

In this case I would've expected Mr X to have identified alternative pension arrangements within around 2 months of becoming aware of the problem. I think Mr X was aware during December 2023 there was a problem because he stopped payments going into his Scottish Widows pension. I think that means for potential employer pension payments that could've been made from March 2024 onwards he should've had arrangements in place that were to his satisfaction.

So, I require Scottish Widows Limited to carry out a loss assessment. It should calculate the value of the contributions Mr X could've received into his personal pension from his employer using the salary sacrifice route he'd been using up until October 2023. This would cover November 2023 until February 2024 (the relevant period), based on the evidenced personal contributions he actually made to his alternative plan.

Mr X will need to furnish Scottish Widows Limited with evidence of the personal pension payments he actually made into his alternative plan covering the relevant period. It will also require other relevant information including relating to matters such as the salary sacrifice scheme Mr X had wanted to make use of and about relevant actual tax reliefs and allowances received and payments made for the relevant period in relation to the personal pension payments under consideration for the appropriate tax year.

To assist both parties in their understanding of my current proposal I've provided a worked example for a fictional Mr Z based on 25/26 tax rates/allowances/reliefs etc:

Assumptions

- Mr Z is a higher-rate taxpayer (40%).
- His gross pension contribution is £4,000.
- His National Insurance (NI) rate is 2% (for higher-rate taxpayers)
- His employer NI rate is 13.8%

Scenario 1: Salary Sacrifice

Since Mr Z's employer contributes directly, he didn't have to pay income tax or NI on the £4,000. He saves:

- Income Tax savings: $£4,000 \times 40\% = £1,600$

- NI savings: $\text{£}4,000 \times 2\% = \text{£}80$

His employer also saves:

- Employer NI savings: $\text{£}4,000 \times 13.8\% = \text{£}552$. Mr Z's employer passed this benefit onto him.
- Total potential benefit: Up to $\text{£}2,232$ ($\text{£}1,680 + \text{£}552$)

Scenario 2: Personal Contribution

- Mr Z contributes $\text{£}4,000$ gross, but paid out-of-pocket $\text{£}3,200$ (since pension providers add 20% tax relief automatically).
- Mr Z also claimed an extra 20% tax relief via Self-Assessment, reducing tax liability by the higher-rate relief: $\text{£}4,000 \times 20\% = \text{£}800$
- Total savings: $\text{£}1,600$ ($\text{£}800 + \text{the } \text{£}800 \text{ already added}$).

Comparison

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Contribution Method	Contribution Cost	Total Tax/NI Savings	Extra Employer NI Benefit	Total Benefit
Salary Sacrifice	$\text{£}4,000$	$\text{£}1,680$	$\text{£}552$	Up to $\text{£}2,232$
Personal Contribution	$\text{£}4,000$	$\text{£}1,600$	$\text{£}0$	$\text{£}1,600$

In Mr X's case, I've concluded he should've been able to make 4 more monthly payments into his Scottish Widows pension between November 23 and February 2024. The firm will also need to consider the impact of the Learning Levy as identified by him.

So after satisfying itself of the evidence it requires from Mr X and then undertaking a calculation along the lines set out above, to each monthly figure of any loss in benefits this indicates, it should add the average rate of return to that sum achieved by his Scottish Widows pension fund from the date the contributions should've been made until it settles.

If there is a loss, Scottish Widows Limited should pay into Mr X's pension plan, to increase its value by the amount of the compensation and any interest. Payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

In the event Scottish Widows Limited is unable to pay the compensation into Mr X's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would've provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

This would be an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr X won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr X's actual or expected marginal rate of tax at his selected retirement age. He indicated in his response to my provisional decision he's likely to be a higher rate taxpayer at the selected retirement age, so the reduction would

equal 40%. I note that he now states his tax position at retirement is actually unclear, but I've taken his initial response as a reasonable assessment at this point.

If Mr X would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 30%.

But it's possible Scottish Widows Limited will be able to pay any outstanding sum directly into Mr X's pension, thus avoiding any adjustment now for notional tax.

Mr X was concerned about what happened in the event Scottish Widows Limited failed to provide the follow the approach to redress which I've set out here. It has had ample opportunity to consider my approach on redress, it hasn't provided any alternative suggestions.

My decision is final and as Scottish Widows Limited understands, it will need to act in accordance with my direction.

Scottish Widows Limited should provide the details of the calculation to Mr X in a clear, simple format.

Trouble and upset

When I'm considering a complaint like Mr X's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Scottish Widows Limited failed to inform Mr X in a clear and fair manner about the changes it had decided to make to the terms and conditions of his pension plan, in particular about the ending of the facility to make third party contributions. The impact of its failings caused Mr X distress and inconvenience.

Scottish Widows did acknowledge its failing in the final response letter it sent Mr X and during the journey at this Service it also increased its offer of compensation in this respect to £150. I think that is a fair award and I require it to make the payment to Mr X if it hasn't yet done so as part of the redress I'm awarding.

My final decision

For the reasons I've already set out, I'm upholding Mr X's complaint and require Scottish Widows Limited to put things right in the way I've directed..

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 24 July 2025.

Kevin Williamson
Ombudsman