

The complaint

Ms S complains that Scottish Widows Limited didn't make her aware of any tax-free lump sum entitlement when she applied to start taking her pension benefits in 2013. She also complains about the way Scottish Widows dealt with her subsequent queries about this in 2024.

What happened

I have already issued a provisional decision in which I set out, in detail, the background to this complaint and my preliminary findings. Both parties have been sent that provisional decision, so I won't repeat what I said here. My provisional decision is, however, attached and forms part of this final decision.

I provisionally decided Ms S's complaint about not being made aware of the possibility of a tax-free lump sum at retirement had been made too late under the rules I must follow. And in relation to her complaint about the way Scottish Widows dealt with her queries about this in 2024, I provisionally decided the £150 it paid to her for the distress and inconvenience it caused was fair and reasonable.

Scottish Widows didn't have any further comments following my provisional decision.

Ms S disagreed with my findings. I address her comments below.

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've read Ms S's comments in response to my provisional decision carefully. They can be summarised as follows: she didn't receive information on how her policy worked until she eventually received a policy certificate in 2024, so it wasn't until then that she had cause to (and did) complain.

I addressed this point in my provisional decision in which I said the following:

"In the background to this complaint, I set out Ms S's contact with Scottish Widows in September 2003. She called Scottish Widows as she wasn't aware her pension had been transferred to it and requested a copy of her policy certificate. I can see that following this phone call, Scottish Widows wrote to Ms S at her address at the time and explained why the plan had been transferred and provided details of the policy. Within this letter, Scottish Widows confirmed that a cash lump sum at retirement would only be available if there was any excess fund after meeting the cost of the GMP. A copy of the May 2003 policy certificate was enclosed.

Ms S may say that she never received this letter. But it was correctly addressed, so I have no reason to believe it wasn't safely received. Further, a copy was sent to her adviser at the time, and I think it's likely the adviser would also have made Ms S aware of the

correspondence.”

So my view was – and remains – that Ms S was provided with information in 2003 on how her policy worked, including the maximum tax-free cash it could pay out. So her complaint about *not* being subsequently paid, or even offered, that tax-free cash when she took her pension benefits was a complaint that ought reasonably to have been made from the point those benefits were paid – which was in 2013. The rules (which I quoted in my provisional decision) would have allowed Ms S three years from that point to make that complaint. But her complaint wasn't made until 2024.

In my provisional decision, I also noted that the information presented to Ms S by Scottish Widows in the run-up to her taking benefits ought reasonably to have prompted her to question her lack of tax-free cash. I said:

“It's also notable that the December 2012 quotation said the tax-free cash would be either “£0.00” (options 1, 2 and 4) or that “no tax-free cash sum will be paid” (option 3). Tax-free cash was evidently a regular enough feature of policies to have been included as a standard part of quotations. So I think the nil value would have looked obvious enough, and incongruous enough, for Ms S to have questioned why tax-free cash wasn't being offered to her. In that light, I don't think Ms S would have even needed to know that her policy could pay out a maximum tax-free cash sum of £3,017 for her to have started to question things. And from that point, she would have had three years to investigate the actions of Scottish Widows and complain if necessary.”

I see no reason to depart from this finding. So it's difficult to conclude anything other than Ms S had become aware (or ought reasonably to have become aware) that she had cause for complaint from 2013 meaning this part of her complaint was made too later under the rules I must follow.

I note that Ms S has commented that it is “bizarre” that her policy certificate should suddenly have been sent to her in 2024. But that isn't relevant to my considerations. For the reasons given above, and in my provisional decision, she already had cause for complaint long before then.

In my provisional decision, I also concluded that the service provided by Scottish Widows when Ms S started to query her lack of tax-free cash could have been better. Although Ms S's response to my provisional decision referred to Scottish Widows taking a “cavalier” attitude to its administration, I've not been provided with any persuasive evidence or arguments to suggest it should increase its distress and inconvenience award from the £150 it has already paid her.

With the above in mind, and having reviewed the case once again, I see no reason to depart from my provisional findings.

COPY OF PROVISIONAL DECISION

The complaint

Ms S complains that Scottish Widows Limited didn't make her aware of any tax-free lump sum entitlement when she applied to start taking her pension benefits in 2013. She also complains about the way Scottish Widows dealt with her queries about this.

Ms S may recognise Clerical Medical as being the brand name of the business she dealt with, but it is Scottish Widows that is responsible for her complaint. For simplicity, I'll only refer to Scottish Widows in my decision.

What happened

In May 2003, a pension that was established for Ms S while she was working for a previous employer was transferred to Scottish Widows. That pension scheme was contracted out of the State Earnings Related Pension Scheme ('SERPS') for some of the time Ms S was working at her previous employer. This arrangement resulted in Ms S being provided with a Guaranteed Minimum Pension ('GMP').

The GMP was the minimum annual pension amount the provider of Ms S's plan was required to pay her at retirement. When Ms S's plan was transferred to Scottish Widows, it took on the obligation of providing that GMP.

A policy certificate produced by Scottish Widows when it set up Ms S's pension gave details of her pension including the amount of the GMP – around £1,500 per year – and the maximum possible amount of tax-free cash she could take, which was £3,067. I can see that this certificate was sent to Ms S and Ms S's financial adviser in May 2003.

Scottish Widows has a record of Ms S calling it in September 2003. She said she wasn't aware her pension had been transferred. She requested a copy of the policy certificate. Scottish Widows suggested she speak to her adviser.

Soon after, Scottish Widows wrote to Ms S. In a letter dated 16 September 2003, it told her it "would like to take the opportunity to explain this policy in more detail." It explained that when the policy was transferred to Scottish Widows, it took on the liability of paying the GMP when she reached her state pension age. It added:

"On deciding to take retirement benefits and after covering the cost of providing the GMP any excess fund will be available for Tax Free Cash up to the maximum limit of £3,067 which appears on your Policy Certificate, a copy of which is enclosed for your information."

A copy was also sent to Ms S's adviser.

In December 2012, Scottish Widows sent Ms S a retirement options pack as she was approaching her state pension age. This included two quotations for taking her benefits as an annuity with Scottish Widows, one on the basis she would take no tax-free cash and the other on the basis she would take the maximum amount available. Both quotations were the same because the cost of providing the GMP exhausted Ms S's fund, meaning there were no monies remaining to provide any tax-free cash. As such, both quotations showed the tax-free cash sum as being "£0.00". Likewise, the options relating to taking benefits from another provider also indicated no tax-free cash would be paid.

In January 2013, Ms S applied to take her pension as an annuity with Scottish Widows. The annuity was set up the following month and Scottish Widows sent her the details of what she would be receiving. No tax-free cash was mentioned.

In August 2016, Ms S moved from her previous address to her current one.

Ms S emailed Scottish Widows in April 2024. She said the provider of her pension prior to the transfer had just sent her a copy of the policy certificate from May 2003. She noted this referred to a lump sum payment on retirement but said she didn't recall being offered this when she applied to take her pension benefits. She requested clarification. She followed up with Scottish Widows shortly afterwards.

In May 2024, Ms S raised a formal complaint with Scottish Widows. She said she had experienced difficulties obtaining an answer to her query from its customer service department which was either unwilling or unable to assist and had failed to call her back when promised. She said she was still awaiting confirmation on why it had taken until April 2024 to have been made aware of the possibility of taking a cash sum on retirement. She specified the amount she felt she had been deprived of – £3,067 – and asked Scottish Widows to pay this amount to her.

Scottish Widows issued its final response to the complaint in July 2024. It acknowledged that Ms S's experience with its customer service department had fallen short of its standards and said it would be sending her £150 in recognition of this. But it said it wasn't upholding Ms S's complaint point about her not being made aware of any tax-free cash entitlement. It said her fund value at retirement didn't meet the cost of the GMP which limited the options available to her. It explained that it had borne the cost of the shortfall in providing the GMP and had therefore honoured the guarantee that came with Ms S's pension. It's worth noting here that internal Scottish Widows correspondence from the time confirms the value of Ms S's pension fund was around £22,000 and the cost to cover the GMP was around £40,000. So in order to pay Ms S the GMP, Scottish Widows had to bridge the £18,000 shortfall by using its own funds.

Unhappy with the response from Scottish Widows, Ms S referred her complaint to the Financial Ombudsman Service.

While the case was awaiting allocation to an investigator, Scottish Widows argued that part of Ms S's complaint had been made out of time under the rules which we must follow (the details of which I cover later).

One of our investigators considered the complaint. She thought Ms S had made her complaint in time, but that Scottish Widows didn't need to do anything more to put things right.

Ms S didn't agree with the investigator's view. She maintained that Scottish Widows hadn't provided complete information, which meant she had missed out on the opportunity to consider alternative options. She also felt its £150 offer was insufficient compensation for the way it had dealt with her initial queries about the issue.

As no agreement was reached, the complaint was passed to me for a decision.

What I've provisionally 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.

Ms S's complaint has two elements. First, that she wasn't made aware of the possibility of taking a tax-free lump sum when she applied to take her pension benefits. And second, that the customer service provided by Scottish Widows when she raised this was inadequate. I'll respond to each of these in turn.

Not being aware of the possibility of a lump sum at retirement

There are two interpretations of this part of Ms S's complaint. Either she thinks she has missed out on a tax-free payment and that she should now be paid that amount. A complaint along these lines wouldn't account for the fact that Ms S's entire pension fund (along with additional funds from Scottish Widows) was used to pay for her annuity so, in that respect, she hasn't lost out financially – her entire pension was used to generate the regular income she is now receiving. Nevertheless, Ms S's request that Scottish Widows pay her £3,067 to settle the complaint suggests she does think she has missed out on a lump sum payment that has been unfairly kept from her. An alternative reading of Ms S's complaint is that she is unhappy she wasn't offered the option of taking tax-free cash (which would have meant lower regular pension payments) and what she has ended up with instead – her entire pension paid as out as regular income – isn't what she would have chosen.

Ultimately, the precise nature of Ms S's complaint doesn't change my thinking here. Her complaint is that she was deprived by Scottish Widows of *something* – either a tax-free lump sum payment or the

option of a tax-free lump sum payment and a lower regular pension – and she thinks she has lost out because of that.

We can't look at every complaint that's referred to us. What we can look at is defined in the Dispute Resolution ("DISP") section of the Financial Conduct Authority Handbook. The relevant section here is DISP 2.8.2R, the relevant sections of which say:

The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) [not set out here as not relevant to this complaint]

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;

unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;

unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R...was as a result of exceptional circumstances; or

(4) [not set out here as not relevant to this complaint]

(5) the respondent has consented to the Ombudsman considering the complaint where the time limits in DISP 2.8.2 R...have expired..."

The "event complained of" is the point at which Ms S took her pension benefits, which was in 2013. This was the point at which Ms S took her entire pension as a regular income and, in her view, the point at which she was unfairly denied a lump sum payment or denied the opportunity to choose a lump sum payment. Ms S complained in 2024 so this was clearly after the six years allowed for in the rules.

Of course, Ms S says she wouldn't have had reason to complain until she received the policy certificate referred to earlier which stated the maximum tax-free cash available under the policy. As Ms S says she only received this in 2024 "out of the blue", she potentially wouldn't have had cause to complain until then.

The rules allow for this in so far as they allow someone to complain three years from the date they became aware, or ought reasonably to have become aware, that they had cause for complaint. This is to allow for those situations where someone may have had no reason to complain within the six years because they would, reasonably, have been unaware of a particular problem, or because the particular problem hadn't yet manifested itself.

I therefore need to consider if Ms S raised this complaint point more than three years from when she became aware, or ought reasonably to have become aware, of having cause for complaint.

In the background to this complaint, I set out Ms S's contact with Scottish Widows in September 2003. She called Scottish Widows as she wasn't aware her pension had been transferred to it and requested a copy of her policy certificate. I can see that following this phone call, Scottish Widows wrote to Ms S at her address at the time and explained why the plan had been transferred and provided details of the policy. Within this letter, Scottish Widows confirmed that a cash lump sum at

retirement would only be available if there was any excess fund after meeting the cost of the GMP. A copy of the May 2003 policy certificate was enclosed.

Ms S may say she never received this letter. But it was correctly addressed, so I have no reason to believe it wasn't safely received. Further, a copy was sent to her adviser at the time, and I think it's likely the adviser would also have made Ms S aware of the correspondence.

So Scottish Widows told Ms S how the policy worked and put her on notice that a lump sum at retirement would only be paid if there were excess monies in her pension after meeting the cost of the GMP. Clearly Ms S disputes ever knowing all this. But for the purposes of my decision, I must also consider constructive knowledge – what Ms S ought reasonably have known – and I'm satisfied she ought reasonably have known how her policy worked, including the conditions under which tax-free cash would be paid.

When Ms S reached her state pension age, Scottish Widows calculated whether her pension fund value met the cost of providing the GMP. It did not. This limited the options available to Ms S at retirement and meant that she was unable to take tax-free cash. This situation isn't uncommon with policies required to provide a GMP.

Scottish Widows notified Ms S in December 2012 that it wouldn't be paying any tax-free cash from her policy. The policy was set up on that basis – that is, without a tax-free cash payment. And pension payments started in February 2013. So the issue Ms S is now complaining about – not being paid, or even offered, the tax-free cash that had been trailed in the policy certificate – would have been known to her from February 2013 at the very latest. Three years from then takes us to February 2016 so the three-year part of the rules doesn't help Ms S here. She became aware (or ought reasonably to have become aware) that she had cause for complaint more than three years before she did complain.

It's also notable that the December 2012 quotation said the tax-free cash would be either "£0.00" (options 1, 2 and 4) or that "no tax-free cash sum will be paid" (option 3). Tax-free cash was evidently a regular enough feature of policies to have been included as a standard part of quotations. So I think the nil value would have looked obvious enough, and incongruous enough, for Ms S to have questioned why tax-free cash wasn't being offered to her. In that light, I don't think Ms S would have even needed to know that her policy could pay out a maximum tax-free cash sum of £3,017 for her to have started to question things. And from that point, she would have had three years to investigate the actions of Scottish Widows and complain if necessary.

Clearly, Ms S would dispute this – her argument being that she wouldn't have considered pursuing the matter in the absence of the policy certificate and the reference to the £3,017 maximum tax-free cash. But, as before, I must also consider constructive knowledge. And I think the quotations given in 2012 ought reasonably have given Ms S that knowledge. They ought reasonably have been enough for her to question why she wasn't getting any tax-free cash – which is the crux of her complaint – and therefore begin the three year period within which she could complain.

Our rules do allow me to consider a complaint made out of time if the failure to make the complaint in time was due to exceptional circumstances or if the respondent firm consents to us looking at a complaint that was made too late.

One example of exceptional circumstances given in the rules is where someone has been, or is, incapacitated. Although this is not the only exceptional circumstance I can consider, it does show the bar is high here. It would generally require someone to be *unable* to refer a complaint to us. But nothing Ms S has said suggests she was *unable* to complain before 2024. So I'm satisfied exceptional circumstances don't apply here. And Scottish Widows hasn't consented to us considering this part of the complaint.

With the above in mind, my provisional decision is that this element of Ms S's complaint has been made out of time.

Customer service issues

I can consider Ms S's concerns about the customer service Scottish Widows provided because these relate to events in 2024 and therefore don't fall foul of the time limits referred to previously.

I understand from the information provided by both parties that when Ms S called Scottish Widows to follow up on the query she had raised, she was passed between several different departments, none of which were able to assist her. Ms S has also told us Scottish Widows didn't call her back when promised. For its part, Scottish Widows has explained that the query was quite challenging as Ms S was referring to a document from 2003, when her policy had closed in 2013 once she started taking her pension benefits.

I think what Scottish Widows has said is reasonable. It wouldn't have been easy to quickly determine if an error had been made given the policy had closed some time ago. But it would have been better customer service if it had simply acknowledged Ms S's query at the outset, explained that it would be investigating it and would contact her as soon as it had done so, rather than passing her between various departments. Scottish Widows has accepted that its service fell short in this regard.

That said, having carefully considered the circumstances, I'm satisfied its offer of £150 is fair and reasonable compensation for the frustration and inconvenience it caused. So, unless any new information comes to light, I'm unlikely to ask Scottish Widows to do anything more to compensate Ms S.

END OF PROVISIONAL DECISION EXTRACT

My final decision

For the reasons given above, Ms S's complaint point about not being aware of the possibility of a tax-free lump sum at retirement has been made out of time. And in relation to the customer service provided in 2024, my final decision is to not uphold Ms S's complaint as the £150 paid by Scottish Widows Limited is fair and reasonable.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 25 July 2025.

Christian Wood
Ombudsman