DRN-4395521

The complaint

Mr B complains about the performance of his pension with Scottish Widows Limited (SWL). He also complains that he received poor service from SWL.

What happened

Mr B has a personal pension plan with SWL. On 2 December 2021, he took 25% of his pension pot as tax-free cash (TFC). The remaining funds were invested in a drawdown pension.

Mr B said that he had planned to retire on his 67th birthday. And that he'd considered purchasing an annuity at that time. So, guided by SWL's literature, he chose to invest the remaining approximately £140,000 in its Pension Protector Fund. He also continued to contribute £200 each month into his pension plan.

Mr B said he received his annual pension statement in December 2022. He said he was shocked to see that the value of his pension pot had fallen to £93,696.48 as at 5 December 2022. He called SWL for clarification, as he thought there'd been a mistake.

Mr B said SWL told him that "*pension values can fall as well as rise*", but didn't offer him any advice or assistance. So he said he wanted to make an official complaint that his pension fund had been allowed to fall in value so alarmingly without him being notified. Mr B said that SWL told him that its Complaints Department would call him. But it never did.

Mr B said he also arranged to talk to SWL about possibly buying an annuity with the remaining funds. SWL discussed this with him on 5 January 2023. And provided Mr B with annuity quotes. Mr B said he again told SWL he wanted to speak with its Complaints Department.

Mr B said that as his pension pot had further fallen in value by the time of the discussion, the annuity he could've got would've been insufficient. So he reluctantly concluded that he'd have to work for at least another year and defer his retirement to no earlier than age 68.

SWL said it wrote to Mr B on 5 May 2023 to tell him he was approaching his retirement date.

Mr B also said that he'd tried to unsuccessfully call SWL about his concerns on 12 May 2023. And that he'd ended up using the online chat facility, which had provided him with an email address. He'd then written to SWL about the following:

- He wanted to defer his retirement date by a year, while continuing to contribute at the same rate.
- He wanted SWL to confirm the current value of his pension pot.
- He wanted to know if his pension pot should be transferred to another investment – one which hadn't fallen in the way his fund had.

Mr B said he only received an acknowledgement to his questions. So he emailed SWL again on 22 May 2023 to chase it for a reply. He said his pension pot had continued to fall since January 2023. He wanted SWL to resolve his complaint as soon as possible given the size of his losses.

Mr B said he wrote to SWL again the next day to tell it that he wanted to transfer his pension to another provider. And that the day after that, he'd received a text message from SWL telling him that it would be in touch soon about his complaint. It had also given him referral rights to this service.

On 25 May 2023 Mr B brought his complaint to this service. He wanted SWL to reimburse the £50,000-plus he felt it'd lost. On the same date, Mr B's chosen new pension provider wrote to him to tell him that it couldn't accept the transfer of funds that had already been crystallised.

Mr B said that SWL sent him a message on 26 May 2023 to tell him that the total value of his pension pot was now £86,903. But it didn't confirm that it'd actioned his request to defer his retirement, or give any information about how to move his funds. He said it also told him that it couldn't transfer his pension pot to his chosen provider as the funds had crystallised.

SWL said it wrote to Mr B on 1 June 2023 confirming Mr B's transfer value and enclosing an application form.

Mr B wrote to SWL to progress his complaint on 3 June 2023. He said the value of his pension had continued to fall, despite his continued contributions. And while he understood that some pension fund managers had been finding things difficult, he felt SWL had behaved unprofessionally. He felt it should've notified him of any problems with his account, such as the recent fall in its value. He also felt he'd been given poor service as SWL's Complaints Department still hadn't contacted him.

Mr B felt that SWL should allow his pension pot to transfer to his chosen provider immediately. He also felt it should reimburse him for the £53,000 he felt it had lost him. And that it should compensate him for the distress it'd caused him, especially considering how close to his original planned retirement he'd been.

On 24 July 2023, SWL wrote to Mr B to tell him that his chosen new provider hadn't been able to accept his transfer because his pension had become crystallised as soon as he'd withdrawn his TFC.

SWL issued its final response to the complaint on 25 July 2023. It didn't think it was responsible for how Mr B's funds had been performing. But acknowledged that the service Mr B had received hadn't met its usual standards. It offered him £100 compensation for the trouble and upset caused.

Mr B was unhappy with SWL's response. He didn't accept its offer of compensation. He felt that although SWL might have no legal requirement to notify its customers that their pension pots had fallen so drastically, it must have a duty of care at the very least to issue a warning - particularly to customers close to retirement.

Mr B acknowledged that the problems he'd had transferring his pension weren't caused by SWL. But said that he'd invested his life savings in a "Pension Protector Fund" that had suggested a value of at least £128,000 at the end of 2022. He felt he'd actually received a completely unprotected fund that was now worth only £91,000.

Our investigator didn't think that the complaint should be upheld. He felt that SWL's offer of

£100 was broadly in the region of what he'd expect for the poor service. But he didn't hold it responsible for the poor performance of Mr B's investment. He said this was because SWL was the pension provider, and it hadn't recommended or advised Mr B on how to invest.

Our investigator also said that SWL wasn't required to alert Mr B to movements in his fund value other than sending annual statements. And said that in any event, online access to Mr B's pension pot was available, so he could've tracked his pension pot's value online.

Mr B didn't agree with our investigator. He made the following points:

- He felt that SWL had offered a Pension Protector Plan that had offered no protection whatsoever. And that this was mis-selling.

- He didn't agree that £100 compensation was reasonable under the circumstances. He felt SWL had lost more than £50,000 of his pension fund and then failed to tell him of the falling value. And that it had completely ignored several emails. And taken seven months to reply to his initial complaint.

Our investigator considered the points Mr B had made. But still felt that SWL wasn't responsible for the performance of the fund Mr B had chosen to invest in.

As agreement couldn't be reached, the complaint has come to me for a review.

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.

Having done so, I'm not going to uphold it. I know this will be very disappointing to Mr B. I'll explain the reasons for my decision.

I first considered if SWL is responsible for the poor performance of the Pension Protector fund.

Is SWL responsible for the poor performance of the Pension Protector fund?

Mr B initially complained to SWL about the performance of his pension pot, which was predominantly invested in the Pension Protector fund.

Mr B said that he'd chosen his investment guided by SWL's literature. And that it had suggested that he could expect between £128K and £145K by the end of 2022. So I can understand why it was such a shock to see that his fund was only worth around £90,000 at that time, after Mr B had paid a further £4,000 into his pension.

But the literature Mr B referred to was simply a projection of the benefits he might expect if his investment performed at certain rates. The projections weren't guaranteed. SWL noted the following alongside the projections:

"*These figures are only examples and aren't guaranteed - they're not minimum or maximum amounts and could be less than the amount(s) paid into Retirement Income. What you will get back depends on a number of factors…*"

From what I've seen, SWL wasn't responsible for the sale of Mr B's pension plan, or for giving him any personal advice on what was suitable for him. SWL was the administrator and plan provider, not the adviser. I've also seen no evidence that SWL ever guaranteed the performance of the Pension Protector fund.

Based on the evidence, I can't fairly say that SWL is responsible for the poor performance of Mr B's funds. I say this because it isn't SWL's role to actively manage the funds. Instead, as the pension provider and administrator, SWL's role is to provide information about fund choices to its customers, so that they can make an informed decision about where to invest, and then to invest its customers' funds in line with their instructions. SWL doesn't give advice on the best way to invest funds, it simply acts on its customers' investment instructions.

I've seen no evidence that SWL failed to carry out its role. And in any event, this service doesn't hold businesses accountable for investment performance. This is because investment performance is outside of a business's control. So I can't uphold this part of the complaint.

I next considered whether the name of the Pension Protector fund was fair.

Name of the Pension Protector fund

Mr B thinks the name of this fund is inappropriate, as he doesn't feel his investment in it has protected his pension.

I can understand Mr B's point, as I think the title of the fund does imply that it is intended to provide protection in some form. But I don't think it implies there is any guarantee. And I don't think that the name alone is enough to understand what that protection might be and how it would work. I'll explain why.

I've seen a copy of Mr B's 2022 annual statement. This stated: "*The value of investments can fall as well as rise*".

The annual statement also said that Mr B should consider if the funds he was invested in were still right for him. It said it was important to review whether his current investment choices met his needs. And recommended that he got advice or guidance to understand his retirement options. It said it had a variety of other investment options available. And said that Mr B could change to another one of its products, or check what other providers had to offer.

I've also carefully reviewed the Pension Protector fund factsheet. This says the fund aims:

"*To provide a return consistent with the variations in market annuity rates with the aim of reducing annuity conversion risk…*".

Under the "Information Statement" section of the factsheet, it states:

"*The Fund does not provide any guarantee of the level of pension in retirement or the cost of buying that pension. It may not be effective for those who intend to buy an inflation-linked pension and does not provide protection against changes in the cost of buying a pension that arise from changes in life expectancy*".

I consider that the underlying nature of the investments within the Pension Protector fund is clearly explained. The factsheet also makes it clear that the fund doesn't guarantee the level of pension in retirement. And the annual statement also stated that the value of Mr B's investments could go up or down. Overall, I've not seen any evidence indicating that the Pension Protector fund said it would provide any level of guarantee, or that it would protect investors from a fall in value.

However, the fund factsheet does explain that the fund aims to move in line with market annuity rates, which means it should move in value broadly in line with the cost of buying a pension. I can see that this could be seen as “protection” to some investors. But I’ve seen no evidence that the fund aims to avoid any fall in value.

Overall, I don’t consider that the fund title was inappropriate. So I can’t fairly uphold this part of the complaint.

I also considered Mr B’s point that SWL should’ve notified him about the fall in value.

Was SWL required to notify Mr B of the fall in value?

Mr B considers that SWL should’ve notified him about the fall in value of his pension once it had started to fall sharply. He felt there’d been a lack of customer care.

I acknowledge that Mr B has been distressed and disappointed by the fall in value of his pension fund. I’m sorry this has happened to him. And I appreciate he’s had to substantially change his retirement plans because of the fall in pension value. But I can’t fairly hold SWL responsible for this, as I’ve explained above.

From what I’ve seen, there’s no requirement on SWL to notify its customers of a fall in value. And I also consider that it wouldn’t be practical, or helpful, to notify its customers of falls in fund values every time that happened. I also note that fund values were always available to Mr B as he could call SWL any time to request them, as he did on a number of occasions.

As SWL wasn’t required to notify its customers of falls in value, and as this service can’t tell a business how to operate, I can’t fairly uphold this part of Mr B’s complaint.

I finally considered the amount of £100 compensation SWL offered Mr B, but which he rejected.

Distress and inconvenience

Mr B said that SWL told him that its Complaints Department would call him. But it never did, even when he asked it again. He also said that he’d struggled to get through to it. And it had failed to respond to his queries in a timely manner.

SWL acknowledged that the service Mr B had received hadn’t met its usual standards. And offered him £100 compensation for the trouble and upset caused.

As our investigator noted, I’m unable to award compensation in respect of complaint handling issues. What I can do is look at the distress and inconvenience caused by the poor service Mr B received in respect of his difficulty getting thought to SWL. And by its failure to answer his questions in a timely manner.

I know Mr B doesn’t agree, but I can’t fairly ask SWL to increase its compensation offer. I say this because I’m satisfied that the £100 it offered was fair for the impact its poor service had on him. I say this because, as I’ve explained above, I’m satisfied that SWL wasn’t responsible for Mr B’s fund falling in value.

I’m sorry that Mr B’s pension fund has gone down in value. I appreciate that this has caused him shock and severe disappointment. But I can’t fairly hold SWL responsible for that fall. And I’ve seen no evidence that it did anything wrong other than the poor service issues covered by its compensation offer. So I can’t uphold the complaint.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 November 2023.

Jo Occleshaw
Ombudsman