

The complaint

Mr G complains that Scottish Widows Limited failed to process the cancellation it had accepted of a transfer instruction he had provided.

What happened

I issued a provisional decision on this complaint in October 2023. In that decision I explained why I thought the complaint should be upheld and what Scottish Widows needed to do to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mr G held pension savings with Scottish Widows. In 2022, with the assistance of his financial advisor, Mr G started to consider the consolidation of the pension savings he held with Scottish Widows, with other pension savings he held with other firms. And in September 2022 he instructed Scottish Widows to transfer his pension savings to a pension plan he held with another provider.

When Scottish Widows started to process Mr G's transfer instruction it identified that the value of his pension savings had fallen by more than 10% since his instruction. So it sought Mr G's authority for the transfer to continue. Mr G provided his agreement by email. Around a week later Mr G changed his mind. The value of his pension savings had continued to fall so he asked Scottish Widows to cancel his transfer request. Scottish Widows accepted that instruction and said the transfer would be cancelled. Scottish Widows told Mr G that even if it failed to stop the transfer in time it would be able to recall the funds and reinstate his pension investments.

Scottish Widows failed to cancel the transfer instruction and the funds were sent to the new provider. Mr G complained to Scottish Widows about what had happened. It apologised for failing to stop the transfer and said it would send him a cheque for £200 in respect of the inconvenience he'd been caused. But it made no offer to attempt to reverse the transfer for Mr G. So Mr G brought his complaint to us.

Before we were able to consider the complaint, Scottish Widows revised its findings on Mr G's complaint. It told us that there was little excuse for not stopping the transfer of Mr G's pension savings and even less excuse for the lack of effort put into retrieving the funds that had been erroneously transferred. It said it was willing to reverse the transfer and reinvest Mr G's pension savings into the same funds as they were originally held, adding any market movements as applicable. And it said that it would pay a further sum of £200 for the stress and inconvenience it had caused to Mr G. It noted that he had been patient and polite throughout all their interactions despite the level of service he had received.

The basic facts of this complaint are not in dispute. Mr G provided Scottish Widows with a clear instruction for the cancellation of his transfer. Scottish Widows accepted that instruction and told Mr G that it would be implemented. And it gave him some further reassurance that, should anything go wrong with the cancellation, it could

request the return of the funds and it would reinvest them as if nothing had happened.

So it is disappointing to see that the transfer of Mr G's pension savings did take place. And it is even more disappointing that it took until Mr G referred his complaint to us, for Scottish Widows to acknowledge that it had failed to put things right following that erroneous transfer, in the way that it had assured Mr G it would. The acknowledgement of the further error was only made some seven months after the transfer took place.

Scottish Widows has agreed to now perform the actions that it said it should have at the outset – recalling the transferred monies and reinvesting them on the same basis (and at the same price) that applied when the investments were first sold to facilitate the transfer. Like our investigator I think that is a fair offer, and would undoubtedly place Mr G back into the position he would have been in October 2022 when the transfer should have been cancelled.

But I have thought carefully about what Mr G has said in relation to that offer of compensation, and why he says it isn't appropriate for his current circumstances. He has said that the events of the past year mean he would have concerns about the administrative capacity of Scottish Widows to undertake the corrective actions. And he has said that it was always his ultimate intention for his pension savings to be consolidated with the new provider, and the cancellation instruction he gave on the transfer was only ever intended to be a delay to the transfer, rather than indicating he would leave his pension savings with Scottish Widows indefinitely.

Mr G says that his current pension investments with the new provider haven't performed as well as those he previously held with Scottish Widows before the transfer. To some degree I'm not persuaded that forms a reasonable basis for compensation to be paid. Mr G had a relatively free choice of investments when his pension savings were transferred. And although I accept he couldn't have placed them in the identical investment (since that was bespoke to Scottish Widows) he could have used a similar investment that might have shown similar investment performance. So I do think a comparison of the different investments is being made with a degree of hindsight.

And there is no clear picture of when Mr G would have decided his pension savings had recovered sufficient value for him to reinstate the transfer that was cancelled. It is impossible to accurately predict the movements of investments, and as Mr G sadly experienced many factors, including government policy, will influence their values. So again, any date that might be used for when the transfer would have been reinstated must be seen as being chosen with the benefit of hindsight.

But Scottish Widows has made an offer to Mr G that would place him back into the position he might have been had the transfer been correctly cancelled and his monies left with the firm. And that would mean Mr G's pension savings would be valued today as if no transfer had ever happened. But to benefit from that offer Mr G would need to agree to his pension savings being returned to Scottish Widows. As I will go on to explain, that doesn't seem to be a necessary condition to place on the redress.

Mr G wishes his pension savings to remain with the new provider. If he accepted the compensation proposal his pension savings would be returned to Scottish Widows. But he could then just as easily immediately instruct another transfer to move the pension savings, including any compensation Scottish Widows has paid, back to the

new provider. That would simply incur costs for both Scottish Widows and the new provider in moving funds back and forwards between the two firms. And whilst appreciating that there is a small risk whilst his pension savings are out of the market during the transfer, there would be little downside for Mr G apart from further administrative inconvenience.

So I currently think a more pragmatic solution would be for Scottish Widows to pay compensation directly into Mr G's new pension plan equivalent to any difference in the value of the transferred funds (after taking account of any investment returns or losses since the date of the transfer) and what they would have been worth if they had remained with Scottish Widows. That will mean that the same amount of compensation would be paid to Mr G as was offered by Scottish Widows, but without the administrative complexity of needing to recall the transfer from the new provider, and for Mr G to then give a new transfer instruction.

Our investigator explained that he thought a total payment of £600 would be reasonable for the distress and inconvenience that was caused to Mr G. I too have considered what would be a reasonable sum of compensation in that regard and share the conclusions reached by the investigator.

So in summary I currently think that Mr G's complaint should be upheld and that it would be fair and reasonable for Scottish Widows to put things right in the manner I set out below. I think this method of redress will be equivalent in cost to the offer Scottish Widows has already made, but allow Mr G to maintain his pension investments with the new provider as he wishes to do.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Scottish Widows said that it accepted all my provisional findings and the way I'd suggested things should be put right for Mr G. It also apologised that, due to an administrative error, it had failed to send the £200 compensation it had originally offered to Mr G.

Mr G also agreed with most of my provisional findings. But he proposed an alternative date be used for assessing whether he had lost out as a result of the transfer not being cancelled. Whilst accepting that any date chosen would be arbitrary in nature, Mr G thought it would be fairer to use the date he referred his complaint to us instead of the date I had proposed – the date of this 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.

As I explained in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr G and by Scottish Widows. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to

put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

As I set out earlier, both parties are in broad agreement about what needs to be done in order to put things right for Mr G. The only matter left outstanding for me to decide here is the date that should be used when calculating any compensation due to Mr G.

The offer that Scottish Widows made to Mr G was reliant on him moving his pension savings back to the firm. It is only through this final decision that Mr G becomes entitled to receive compensation whilst leaving his pension savings with his new provider. So it seems to me that it is only on the issue of this final decision that any compensation that is due can reasonably be assessed. And, given that Mr G would now be able to compare any compensation that would be due using a calculation date of when his complaint was referred to us, there is a risk that he might be able to choose a more beneficial calculation point using an alternative date.

So although I understand what Mr G has said about the arbitrary nature of any date that is chosen, I think it fairer to both parties that I retain the proposals I set out in my provisional decision. I repeat that method of calculating the compensation below for clarity.

Putting things right

In order to put things right for Mr G Scottish Widows should;

- Determine, as at the date of this final decision, the notional value of Mr G's pension savings had they not been transferred and remained invested in the same way as they were before the transfer.
- With the assistance of Mr G's new pension provider, determine, as at the date of this final decision, the actual value of Mr G's transferred pension savings including any investment gains or losses achieved since the transfer.
- If the actual value is less than the notional value, Mr G has lost out and Scottish Widows should pay him compensation equal to the difference.

Scottish Widows should pay into Mr G's new pension plan to increase its value by the total amount of the compensation. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Scottish Widows is unable to pay the total amount into Mr G's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr G won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr G's expected marginal rate of tax at his selected retirement age. I think it reasonable to assume that Mr G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction should equal the current basic rate of tax. However, as Mr G would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

The compensation should be paid to Mr G within 28 days of Scottish Widows being notified of his acceptance of any final decision along these lines. Should the compensation not have been paid by that date Scottish Widows should add simple interest at a rate of 8% per annum to the compensation amount from the date of my final decision to the date of settlement. HM Revenue & Customs will require Scottish Widows to take off tax from this interest. Scottish Widows must give Mr G a certificate showing how much tax it's taken off if he asks for one.

Additionally, and regardless of whether Mr G has suffered a loss as calculated above, Scottish Widows should pay compensation of £600 to Mr G for the distress and inconvenience he has been caused.

My final decision

My final decision is that I uphold Mr G's complaint and direct Scottish Widows Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 December 2023.

Paul Reilly
Ombudsman