DRN-4526000

The complaint

Mrs T complains that Scottish Widows Limited (SW) failed to provide any risk warning on the pension funds she held within her Retirement Account. She said she was led to believe the funds she held were relatively safe. She also complains about the performance of her funds.

When Mrs T brought her complaint to this service, she was unsure about who to complain to. This decision only covers her complaint against SW.

What happened

In December 2012, Mrs T's Independent Financial Adviser (IFA) advised her to open a Retirement Account with SW. And to invest according to SW's Cautious Governed Investment Strategy (GIS), targeting annuity. Mrs T's Retirement Account started in early 2013.

In May 2014, SW wrote to Mrs T to confirm that as part of the GIS she was invested in, over the next five years her funds would be gradually moved from 100% in the SW Pension Portfolio Four fund, to 75% in the SW Pension Protector fund, and 25% in the SW Cash fund. SW said that it'd referred Mrs T to the GIS booklet it'd enclosed with the letter. And asked her to contact it or her financial adviser with any questions she may have.

On 5 May 2020, SW wrote to Mrs T to ask her to let it know what she wanted to do with her pension as she was approaching her chosen retirement age. It suggested that she accessed free government guidance or spoke to an adviser to find out about her options. The letter stated that if SW hadn't heard from Mrs T by her chosen retirement date, it would automatically extend the end date to her 75th birthday. The letter also explained:

"*If you have invested in a Governed Investment Strategy your strategy will cease and your Investments will be held in the current underlying funds and any further payments will continue to be Invested as they are currently unless you make another fund selection.*"

SW also wrote to Mrs T on 20 May 2020 about her investment choice. It confirmed she had chosen to invest in GIS targeting annuity. And, under a statement headed IMPORTANT, noted:

"The way your pension savings are currently invested assumes you'll choose to buy an annuity at retirement and we have already started to switch your investments into the right funds to support this.

It's important to ensure you are targeting the option that best meets your needs in retirement. The other options available to you are to take a flexible income or to take your pension pot as one or more cash lump sums. Your Plan will be invested in different funds depending on which option you select.

Please read this letter and let us know of any changes you'd like to make".

The letter explained Mrs T's other retirement options. And again recommended that she took financial advice about her choices. It also said that she should check whether her pension savings were invested in the right way for how and when she intended to take her retirement benefits. And that if she felt she might choose an option different from buying an annuity, she should review the GIS she was in, and decide whether she should move to a different one now, to help ensure her pension was invested appropriately until she started taking her retirement benefits.

I understand that Mrs T decided to take her tax-free cash lump sum at this point.

SW wrote to Mrs T on 21 May 2020 to tell her that as she'd chosen to designate all of her investments to Retirement Income, it'd switched off the GIS which had applied to her Retirement Account. It said she should refer to the GIS booklet for further information. And that she could call it, or speak to her financial adviser, if she had any questions.

On 27 May 2020, SW wrote to Mrs T with confirmation of her request to make a change to her Retirement Account. The letter contained Mrs T's chosen retirement date in 2021. And said that it would pay a tax-free lump sum to Mrs T within five working days of the letter. And that the remaining funds would be placed into a retirement income arrangement. The letter also noted that no adviser charges applied.

On 25 December 2020, SW wrote to Mrs T to tell her she was approaching her retirement date. It said it wanted to help her get a better understanding of her retirement options before she decided what to do with her pension. A few months later, just before Mrs T's chosen retirement date, SW wrote to her because it hadn't yet heard from her about her retirement plans. It said it'd therefore extended her retirement age to 99, And asked her to contact it to discuss her options.

Mrs T first complained to SW in January 2023. She said she was unhappy about the investment advise her IFA had given her to invest in the GIS targeting annuity. Mrs T felt her IFA had assumed she would buy an annuity at her normal retirement age. She said she'd been led to believe the GIS would be less exposed to fluctuation. But that, contrary to expectations, she'd suffered significant losses just before her retirement. Mrs T also said that her IFA had made no effort to ensure that its advice remained appropriate for her.

Mrs T asked SW to comment on:

"1) Why these funds were deemed to be appropriate.

2) Why these funds were deemed to continue to be appropriate up until I retired".

SW didn't raise a complaint when it received Mrs T's letter. But it did provide a response in January 2023. However, Mrs T said she didn't receive that response. So she chased SW for a reply to her complaint on 11 May 2023.

SW issued its final response on 18 May 2023. While it felt Mrs T had received poor service on her complaint, it didn't uphold her complaint about poor performance. It said that it was normal for pension values to fluctuate. And that even low risk funds could go down in value.

SW said it hadn't advised Mrs T about her initial investment. So it said it couldn't comment on the appropriateness of it. It also said it wasn't able to provide advice. It also told Mrs T that she could change her fund choice.

SW noted that Mrs T's IFA was no longer in business. It referred her to the Financial Services Compensation Scheme (FSCS). It offered her £50 to apologise for the delay in responding to her complaint.

Mrs T wasn't happy with SW's response. So she brought her complaint to this service. She said she'd suffered significant losses to the value of her pension. And therefore felt that the funds she'd invested in were not in fact low risk. Mrs T felt that SW had promoted the funds as low risk. And that it hadn't highlighted the potential for the level of losses she'd sustained. She wanted SW to compensate her for her losses.

Our investigator felt that it was Mrs T's IFA at the time she opened her Retirement Account who should be required to determine whether or not the chosen investment strategy was suitable for her needs. She also said that she'd seen no evidence that SW had provided Mrs T with any advice. She felt that the fund factsheets for the funds Mrs T had invested in showed that the funds were in line with Mrs T's investment mandate of 'cautious' or 'low risk'. And that SW hadn't ever said that those funds were immune from falls in value.

Our investigator also considered that the £50 SW had offered Mrs T as an apology for the delayed complaint response was reasonable.

Mrs T didn't agree with our investigator. She made the following points:

- She wanted to know why it had been assumed that she'd buy an annuity.

- She felt many people had been affected by the promotion of funds like hers. And wanted to know how she could take this further. In particular, she wanted to know why SW had promoted the fund as safe when it clearly wasn't. She said she didn't remember ever receiving any risk warnings in line with what had actually happened.

- Mrs T also wanted to know what steps the fund managers had taken to remedy the losses suffered once interest rates began to rise.

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 Mrs T. I'll explain the reasons for my decision.

I first considered if SW gave Mrs T any investment advice.

Did SW give Mrs T any investment advice?

Mrs T wanted to know why it'd been assumed that she'd buy an annuity at retirement.

As our investigator noted, it was Mrs T's IFA at the time which advised her where and how to invest. From what I've seen, SW wasn't responsible for the sale of Mrs T's pension plan, or for giving her any personal advice on what was suitable for her. SW was the administrator and plan provider, not the adviser.

As such, SW's role was to provide Mrs T with information about fund choices, so that she could make an informed decision about where to invest, and then to invest her funds in line with her instructions. SW didn't give Mrs T advice on the best way to invest funds, it simply acted on her/her IFA's investment instructions. SW could only take investment instructions from Mrs T and her IFA. It couldn't itself provide her with advice. Therefore I can't fairly hold SW responsible for Mrs T's investment choices as it didn't provide her with any advice.

I also considered Mrs T's question to SW about why her funds continued to be deemed appropriate.

As I noted earlier, SW couldn't provide Mrs T with advice. So, even if it had known that the funds she was invested in weren't appropriate for her, it couldn't have suggested she changed them.

From what I've seen, SW did suggest that Mrs T continued to consider whether her investment choices remained appropriate for her. I say this because, for example, its 20 May 2020 letter stated that it was important Mrs T was targeting the option that best met her retirement needs. The letter also provided her with information about her other options.

Overall, I'm satisfied that SW performed its role of administrator and plan provider without error. And I'm satisfied that it didn't give Mrs T any investment advice.

I next considered if SW is responsible for the poor performance of Mrs T's funds.

Is SW responsible for the poor performance of Mrs T's funds?

Mrs T initially complained to SW about the performance of her pension pot, which was predominantly invested in its Pension Protector fund.

Mrs T said that although her IFA had made the initial recommendation to invest as she did, SW had promoted the fund as safe when it clearly wasn't. And she didn't remember ever receiving any risk warnings that the fund might suffer from losses in the way it did.

Mrs T also wanted to know what steps SW's fund managers took to remedy the losses she suffered once interest rates began to rise.

I've carefully reviewed the Pension Protector fund factsheet in order to see what SW said about the fund. 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. 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. This means that if interest rates rise and annuity rates fall, the fund would also likely fall in value. But the amount of pension that the lower fund would then buy would be broadly the same.

Therefore, although Mrs T wants to know what actions SW's investment managers took once interest rates began to rise, I wouldn't have expected it to do anything different. The fund had been developed to move broadly in line with the cost of buying a pension. And I've seen no evidence that it wasn't carrying out its stated aim.

I acknowledge that Mrs T would've liked SW to have provided risk warnings that the fund might suffer from the sort of losses she experienced. And that she feels that many other people have seen the sort of losses that she has when investing in funds like hers. But I've seen no evidence that SW ever guaranteed the performance of the Pension Protector fund. And in any event, as I explained earlier, the fund was intended to broadly match the amount of pension the fund would buy at retirement, rather than to protect the value of the fund.

Based on the evidence, I can't fairly say that SW is responsible for the poor performance of Mrs T's funds. As I noted earlier, SW's role as the pension provider and administrator 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.

I've seen no evidence that SW 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 fairly say that SW is responsible for the poor performance of Mrs T's funds.

I'm sorry that Mrs T's pension fund has gone down in value. I appreciate that this has caused her severe disappointment. But I can't fairly hold SW responsible for that fall. And I've seen no evidence that it did anything wrong. So I can't uphold the complaint.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 12 February 2024.

Jo Occleshaw
Ombudsman