DRN-4309545

The complaint

Mr L complains that Scottish Widows Limited (SWL) delayed processing his pension switch request. He also says that they gave him an inaccurate pension valuation, incorrectly informed him of the need to take financial advice and gave him incorrect information about what options he had with his pension fund at retirement.

Mr L states the delays and misinformation have impacted him financially and that he'd now like to compensated for SWL's mistakes.

What happened

In September 2022, Mr L had a telephone meeting with a representative from SWL about his Executive Personal Pension (EPP). The purpose of the discussion was to organise the payment of benefits on his plan. Mr L's pension contained protected tax-free cash. That feature meant he was able to take 40% of his total pension pot tax-free rather than the usual 25% of the fund that other pension plans allow. At the end of the meeting, Mr L had decided he wanted to take the full 40% and transfer the balance of his fund into a new retirement account with SWL. Mr L planned to use the monies he was releasing from his pension to reduce/offset part of his mortgage debt. The plan being that he'd then be able to draw a flexible income in the future from the remaining fund when needed.

As Mr L hadn't heard anything back from SWL by mid October 2022, he decided to call them asking for an update on when he could expect to see his tax-free cash payment. The next day, SWL telephoned Mr L back, explaining there'd been a delay. In addition, they said the value of his plan had fallen by around £22,000. Concerned about the decrease, Mr L asked SWL to pause the transfer on the basis that he would rather wait for the fund value to recover.

Shortly afterwards, Mr L decided to formally complain to SWL. He said he was unhappy that SWL had delayed transferring his pension. Mr L went on to say that the value of his pension had declined because of SWL's delays and that meant he'd had to cancel the transfer.

Mr L later went on to explain that he'd originally intended to use the pension's tax-free cash to repay his mortgage. And, because of SWL's delays along with the fact he'd had to cancel the transfer, further mortgage payments had to be made to his lender. Mr L also explained that he felt he'd missed out on investment growth in the new plan and wanted SWL to recompense him for both issues.

After reviewing Mr L's concerns, SWL upheld his complaint in December 2022. In summary, they explained they'd incorrectly advised him his pension had decreased in value when he telephoned them in October 2022 and they went on to say that he should've been informed his pension is based on the value at 22 September 2022 – which is when he originally asked SWL to switch his plan.

- To say sorry for the trouble they'd caused, SWL offered Mr L £80. However, in a later letter to Mr L (dated 30 December 2022), SWL explained they shouldn't be held accountable for the additional mortgage payments Mr L had made or the investment growth potential that he said he'd missed out on.

- SWL went on to explain that Mr L's pension had increased in value and should he wish to proceed with the transfer, he would only need to run through a brief re-cap on the telephone with them.

In January 2023, Mr L contacted SWL asking to resume the switch. However, they explained that if he wanted to proceed, he'd need to seek independent financial advice. Given SWL had stated in their October 2022 complaint resolution letter that he wouldn't need to seek advice, Mr L again complained to them.

After looking into his further concern in February 2023, SWL explained that they were wrong to inform him that he must seek financial advice before they were prepared to arrange his tax-free cash withdrawal and pension switch. In that letter, SWL also highlighted they had provided incorrect information about his tax-free cash options in their September 2022 discussions.

SWL explained that if Mr L were to transfer his pension as he originally intended, he wouldn't be able to take the enhanced tax-free cash payment of 40%, only the smaller 25% that applies to all other pension pots. They explained that because of the terms and conditions on the plan, should he want to take the enhanced tax-free cash, he would then need to purchase an annuity. To say sorry for misinforming him, SWL explained they were offering Mr L £100 for the trouble they'd caused. The £100 was in addition to the £80 SWL had already offered.

Mr L was unhappy with the response from SWL, so he referred his complaint to this service. In summary, he repeated the same concerns he'd set out to SWL – that he was unhappy about the length of time it took SWL to sort out his tax-free cash payment, that he was given incorrect information about the value of his pension and that he'd need to take financial advice. In addition, he explained that he was misinformed about the level of tax-free cash he could draw from his pension.

The complaint was then considered by one of our Investigators. She concluded that SWL hadn't treated Mr L fairly. She explained, though, that had Mr L wanted to, he could've still proceeded with the transfer in December 2022 but chose not to do so. Had he done, given his plan had grown in value by £2,000, it would've cancelled out the additional mortgage payments he'd made in that period. She felt the £80 offer SWL had made in respect of that issue was too low and £150 would take better account of the inconvenience caused.

Our Investigator also felt that Mr L was still able to take his tax-free cash should he have wished to do so but hadn't. She also explained that the £100 SWL offered to Mr L for the second part of his complaint didn't fully recognise the inconvenience they'd caused him and considered £250 better reflected the misinformation and trouble SWL had brought about.

In response to our Investigator's view, SWL agreed with her findings - Mr L, however, didn't. In summary, he said he didn't feel the decision took account of the lost investment growth he could've benefited from had the transfer been completed in a timely manner. He also didn't believe it was reasonable to note he'd not acted in a timely manner. He explained that all the delays and obstacles were the fault of SWL. Mr L went on to say that SWL's letter in February 2023 was the first he'd learned of the fact he would be unable to take more than 25% of his fund tax-free should he wish to move the remaining monies into drawdown.

Referring to previous documentation from a number of years back that Mr L felt showed SWL had misled him, he asked the Investigator to look again at her decision.

Our Investigator was not persuaded to change her view as she didn't believe Mr L had presented any new arguments that she'd not already considered or responded to. So, Mr L then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering the complaint, I reached a different outcome to that of our Investigator. I explained that whilst I was still planning on upholding Mr L's complaint, I was doing so for different reasons. In addition, I also explained that I was planning on amending the redress that I believe SWL needed to pay Mr L to put things right.

For completeness, I include my provisional decision below:

<u>My Provisional Decision</u>

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr L and SWL in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it is for me to decide, based on the available information I've been given, what's more likely than not to have happened. However, I hope neither Mr L or SWL will take the fact that my findings focus on what I consider to be the central issues, and not in as much detail as they have outlined, as a discourtesy.

SWL have conceded that they got a number of things wrong when dealing with Mr L's retirement planning needs. So, there's no dispute that:

- *They didn't transfer his pension to the new plan within the 3 weeks they committed to.*
- *They misinformed him about the transfer value of his pension – which hadn't fallen in value by £22,000.*
- *He didn't need to take independent financial advice before taking the benefits from his plan.*
- *Mr L couldn't take his protected tax-free cash of 40% and still transfer his pension to a new SWL Retirement Account.*

So, it seems that as none of the key mistakes are disputed, the focus of my decision should be anchored around whether the steps SWL have taken to put things right for Mr L are fair and reasonable. Mr L doesn't believe the remedy that either SWL or our Investigator recommended would put him back in the position he would now be in had the mistakes not occurred. And, I agree. I'll explain why below.

Whilst I've already set out the main dates in the 'what happened' section above, the timeline is very important in this particular case. After SWL hadn't completed Mr L's transfer by the agreed deadline, he contacted them on 13 October 2022 and complained. Having been advised that his pension had decreased by £22,000, it's understandable that he decided to pause the transfer whilst he waited for his monies to recover and his complaint was being dealt with. SWL issued a resolution letter dated 14 December 2022 - it was at that point Mr L had a number of telephone conversations with an SWL representative on 14 and 19 December 2022. In that latter conversation, Mr L says he asked whether they'd recompense the lost investment growth potential he'd missed out on by SWL not having switched his fund by the agreed timescale. In addition, he also asked if they'd refund the further mortgage *payments he'd had to make because he couldn't repay his mortgage when he thought he'd be able to with his tax-free cash.*

In response to his questions from 19 December 2022, SWL issued a letter to Mr L dated 30 December 2022, which he states he didn't receive until over a week later on 9 January 2023. The letter explained they wouldn't cover any investment losses or the mortgage payments he'd had to make since October onwards because of the delays. In summary, SWL said it wouldn't be possible to determine what investment growth he'd missed out on. Some two weeks later, on 23 January 2023, Mr L asked SWL to recommence the switch process. It's at that point that he was advised of the need to seek independent financial advice before they could undertake his request.

So, having received SWL's letter in mid-December 2022, he immediately contacted them to explore their proposed resolution and question whether they'd cover the lost investment growth potential. It wasn't until nearly a month later that he received SWL's response. So, I don't think it was unreasonable during that window for Mr L to have taken no further action with his pension, despite the fact he was told it had increased in value by £2,000. That's because he was waiting for SWL to confirm back whether they'd compensate him for the mistakes they'd made.

And then, having received a response to his further queries, he reflected on SWL's reply for two weeks, which I don't think is an unreasonable time frame. Despite his best efforts to recommence the switch at that point, SWL prevented him from doing so by stating that he needed to take independent financial advice.

It therefore seems to me that Mr L acted in a timely and reasonable manner throughout the process.

I've also carefully considered whether Mr L was misled about his tax-free cash options. Mr L's existing SWL policy is an Executive Pension Plan. The terms of his pension state that when benefits are eventually taken, they have to be provided in the form of an annuity. Unless that is, he was to transfer those monies away to another provider before taking them. Unfortunately for Mr L, by transferring the fund away, it would result in the loss of his protected tax-free cash. That's something Mr L wanted to avoid because, he says, he wanted to use the enhanced tax-free cash to offset part of his mortgage.

However, in support of his complaint, Mr L provided this service with a letter that SWL sent to him in January 2014. Mr L stated that the letter suggested income drawdown was an option on his plan. In summary, he believed that meant if income drawdown was available, there was no reason why SWL couldn't pay his protected tax-free cash and allow him the option of transferring the crystalised fund. But from what I've read, I'm not persuaded that's the case. The 2014 letter, in my opinion, appears to set out a number of general options at retirement rather than scheme specific choices that are available on Mr L's plan.

I've looked at a letter SWL sent Mr L on 23 June 2015 in response to some queries that he'd raised about the tax-free cash and plan options on 10 June 2015. Mr L has explained that this letter is relevant because it shows SWL advised him drawdown was available and there were no penalties for moving the policy to another provider, so by default that meant he'd be able to take the full enhanced tax-free cash. However, I don't agree with Mr L's contention that this demonstrates SWL have misled him, that's because a drawdown option is available but only on their retirement account platform (which is what SWL set up for him in September 2022). Furthermore, there wouldn't be any penalties should he wish to move his plan away. Whilst the June 2015 letter SWL issued to Mr L is technically correct, I think it would've benefited from further clarification of the points they'd made - for example, by *moving to drawdown, he would lose the enhanced tax-free cash but that doesn't mean he was misled.*

In addition, I've also looked at the original terms and conditions that Mr L was provided with when he set his plan up. Unsurprisingly, Mr L's complaint scenario isn't covered, although at the point the terms and conditions were written (2002), enhanced versus regular tax-free cash wasn't a consideration. Importantly though, what Mr L signed up for when he took the plan out hasn't changed. The policy would still provide him with an annuity at retirement should he wish. The only difference is following legislative changes, how consumers can take their benefits has altered – albeit Mr L's plan hasn't changed to take account of the new options that are available on more modern policies, which is why he's now having to transfer away to access those options.

I've thought about Mr L's objectives and he's been consistent throughout this process – he wanted to access his monies flexibly to repay part of his mortgage and then transfer the rest of his monies into a flexible wrapper to enable him to drawdown those monies at a later date. So, despite not being able to extract the higher enhanced tax-free cash, I think he would've still gone ahead with the lower 25% had SWL correctly identified the limitations of his plan in September 2022. That's also reflected in the actions of Mr L, who having been told in December 2022 he could only take the lesser amount, attempted to restart the switch process in January 2023 but was prevented from doing so by SWL after they insisted he needed to seek financial advice.

So, I've concluded it's more likely than not that had SWL correctly informed Mr L of his options in September 2022, he would've extracted the 25% tax-free cash, used those monies to repay/offset part of his mortgage and switched the remaining funds to a new SWL Retirement Account. Working to the time commitments that SWL provided Mr L with, that would've all happened by 13 October 2022.

In their correspondence with this service, SWL have explained that it would be impossible to determine what investment losses Mr L may have suffered because of their initial delays. I don't agree though. I think it is clear what Mr L's plans were in September 2022. At that time, SWL provided him with a letter explaining that he wished to transfer out of his current arrangement and into a new SWL Retirement Account. The same letter confirmed that 100% of his monies (after his tax-free cash had been paid) should be invested in their 'SW Pension Portfolio A' fund.

In addition, as Mr L didn't receive his tax-free cash when he originally intended, he had to continue making mortgage payments for a longer period than he'd anticipated. I'm therefore of the view that SWL should recompense him for those costs too. I'm satisfied that Mr L intended to use those monies to partially repay his mortgage because, in their complaint resolution letter of 14 December 2022, SWL have acknowledged their understanding of this fact so it therefore must've been clear to them before October 2022 (and in their September 2022 interactions) that was always his plan.

<u>Responses to my provisional decision</u>

After considering my provisional decision, both Mr L and SWL explained that they accepted the outcome.

However, various queries were raised by both parties around the redress that I had initially set out. And, after discussions, a number of iterations of that redress were shared before a final approach was determined.

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 think it's important to be clear that we can't wind the clock back and fully replicate what should have happened in 2022. There are several ways in how the redress could be approached and having listened carefully to both Mr L and SWL, I'm satisfied that the methodology below strikes the right balance between putting Mr L back as close as is reasonably possible to the position he would've been in had it not been for SWL's errors and acknowledging that we're now working on a different timeline and that therefore there is a need to take account of his current circumstances at this moment in time.

Therefore, I'm upholding Mr L's complaint for the reasons I've set out above and as such, I require SWL to take the following actions to put things right for him:

Putting things right

Given the complexity of the case, I acknowledge that what I've set out below wouldn't fully replicate what would have happened had the mistake not occurred but, I'm satisfied it will do so as near as is reasonably possible without making the process too onerous. Given we're a quick and informal dispute resolution service, I also think this approach is the fairest and simplest way to drawing a line under the complaint.

SWL have explained that because Mr L's existing pension plan is being transferred internally to a new SWL pension plan, they're able to back-date the transaction as though it would have happened when it should have done. This will place Mr L's pension plan back into the same position it would have been in had the error not occurred.

In my provisional decision, I had originally instructed SWL to pay Mr L the tax-free cash backdated to 13 October 2022. However, Mr L has stated the monies he used to repay his mortgage came from his cash ISA and therefore, to replenish those funds back into that account would take a number of years. As such, I'm sympathetic to his concerns that if SWL were to pay him the tax-free cash now, the funds would become taxable in a deposit account. Therefore, I believe instructing SWL to leave those funds invested, allowing Mr L the opportunity to drawdown the monies as and when his ISA allowances permit is the simplest and fairest way of dealing with this point.

Therefore:

1. I require SWL to complete the pension switch of Mr L's existing Executive Personal Pension to the new SWL Retirement Account Pension Portfolio A within 14 days of my final decision.

2. The start date of the new Retirement Account should be backdated to Mr L's 'claim date' of 22 September 2022 using the full value of Mr L's pension from this date.

    a. Before completing the switch, SWL should compare the performance of Mr L's existing Executive Personal Pension at the date of the final decision with what the new Retirement Account Pension Portfolio A would have achieved over the same period.

    b. If the value of the existing Executive Personal Pension is higher than the new

Retirement Account would be on the date of the final decision, SWL should ensure that Mr L is not disadvantaged by backdating the Retirement Account. As such, they should increase the value of the new Retirement Account so it matches the value of the existing Executive Personal Pension.

   c. If the value of the new Retirement Account would be greater than the existing Executive Personal Pension over that period, there is a loss and Mr L's pension should be compensated.

3. SWL should calculate the 25% tax-free cash Mr L would've been entitled to, based on the 'claim date' on 22 September 2022.

4. They should then calculate the growth it achieved in his existing Executive Personal Pension between 14 October 2022 and 5 March 2023.

5. SWL should establish the amount of mortgage interest Mr L paid for the period from 14 October 2022* to 5 March 2023**. To do so, they should use the following calculation:

   a. 25% tax free cash (in 3. above) x (mortgage interest rate) / 365 x (days in the month)

** 14 October 2022 is the date that the mortgage lender would've received the tax-free cash.*

*** 5 March 2023 is the day before Mr L used his savings to partially repay his mortgage.*

6. SWL can then offset only the amount of mortgage interest paid in calculation 5 against the return achieved in calculation 4.

If I didn't net off any returns Mr L achieved in calculation 4, Mr L would benefit twice (investment returns on his full 25% tax-free cash for the full period (from October onwards) and refund of mortgage interest). I think this approach is the simplest and fairest manner for both parties in the circumstances.

I don't think it's reasonable to ask SWL to cover the interest costs on £136,000 (which is the enhanced tax-free cash) as Mr L had originally asked for because given he wanted to enter flexi-drawdown, he would never have been able to extract that amount of money (40%) from his plan and take that proposed course of action.

I'm therefore satisfied this approach is fair and reasonable to both parties.

Trouble and upset

Given the pattern and nature of mistakes that SWL have made, they should pay Mr L £400 for the trouble and upset he's experienced. If SWL have already paid the £180 that they made reference to in their complaint resolution letters, they can deduct that from the £400 I'm awarding Mr L. That means they should pay him a further £220.

I'm of the view that the £400 takes account of the misinformation SWL provided to Mr L about his retirement options in September 2022, the delays he faced and the inaccurate claim that he needed to obtain independent financial advice. It also reflects the fact that he wasn't able to repay part of his mortgage with his preferred funds when he originally wished to do so.

My final decision

I uphold the complaint. My final decision is that Scottish Widows Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 11 October 2023.

Simon Fox
Ombudsman