DRN-3929487

The complaint

Mrs P has complained to Scottish Widows Limited after it switched the fund her pension was invested in without her consent. Scottish Widows upheld the complaint but Mrs P is unhappy with what it has offered to do to put matters right.

What happened

Mrs P holds a personal pension plan with Scottish Widows. This was set up through her employer as a group personal pension and was invested in line with her employer's bespoke investment package. Mrs P left her employer's scheme in March 2016 and at this point she no longer had access to the bespoke investment package. So, in May 2016, Scottish Widows switched the pension fund over to its Balanced Pension Investment Approach (PIA) package.

The plan was initially set up with a retirement date of 9 April 2016. Mrs P chose not to take her benefits at this point and the retirement date was auto-deferred to April 2036, to coincide with Mrs P's 75th birthday.

Scottish Widows says that a further fund switch took place when the retirement date was auto-deferred; the funds were switched to the Pension Portfolio Two (PPT) fund. Scottish Widows say that this was an error as no instruction had been received from Mrs P.

In May 2020, Scottish Widows noticed the error and it arranged for the fund to be switched back to the PIA package. It said it did this because this was in line with its belief that Mrs P expected the risk profile of the plan to be linked to the original selected retirement date.

In October 2020, Scottish Widows wrote to Mrs P to explain that it had fixed an error on her plan. It said the plan had been invested incorrectly but that this had now been rectified.

Mrs P contacted Scottish Widows in December 2020. At this point a further letter was issued along with plan information. The letter explained the error that had been identified and what Scottish Widows had done to rectify the matter. It also explained that the gain made on the policy as a result of the fund being incorrectly invested since 2016 had been retained on the plan. But going forward the plan was now invested in line with the expectation that Mrs P's risk profile is in line with her original retirement date in 2016 rather than 2036.

In January 2021 Scottish Widows issued an update to Mrs P. This confirmed the fund value at that point was £73,825,79. It also reminded Mrs P that she should review her pension and it provided details of where Mrs P could go for advice or guidance.

In July 2021, an annual statement was issued. This confirmed that the fund value had increased slightly to £73,064.04. It also confirmed that at age 75 the pension could be worth £52,600.

Following a request from Mrs P, in November 2021, Scottish Widows sent her projections for her pension at age 62, 65 and 70.

In January 2022, Mrs P called Scottish Widows to complain about the auto-correction to her fund. She said that although the letter in December 2020 had said that she wasn't worse off, she was as her pension fund was reducing and she hadn't requested the fund switch. During a call with Scottish Widows she said that she wanted it to provide a table comparing the performance of her plan since 2020, while in the PIA package, against the PPT fund.

Scottish Widow's upheld the complaint and offered £250 compensation, broken down as £200 for the distress and inconvenience caused and £50 for the delay in responding to the complaint. It also explained that it wasn't possible to provide the fund comparison Mrs P had requested. This was due to the discounted annual management charge, which Scottish Widows said it would be near-impossible to accurately calculate manually.

Mrs P wasn't satisfied with Scottish Widows' response so she referred her complaint to our Service for an independent review.

The complaint was considered by two of our investigators but as the matter was unable to be resolved at that stage, I issued a provisional decision in July 2023. The contents of which is set out below.

<u>My provisional decision</u>

"*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 Mrs P and 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 have happened.*

Having reviewed all the information on file, I intend to uphold this complaint. But this is on a different basis to the investigator. So there is a change to what I think Scottish Widows needs to do to put things right. I've set out my reasoning for this below.

In the run up to Mrs P's SRD, in April 2016, Scottish Widows sent her letters confirming that if it didn't hear from her before her SRD, it would automatically defer the retirement date on the pension to age 75 and the plan would remain invested as it was at that time. Up to that point, the plan had been invested in line with Mrs P's former employer's investment strategy. This meant that, in the run up to her retirement, the risk profile of the fund she had been invested in slowly reduced. The aim of this was to avoid any large dips in fund performance close to retirement when the fund would have little time to recover. When Mrs P left her employer, she no longer had access to the investment package she had been invested in. So Scottish Widows switched her investment over to its PIA package. This effectively mirrored the risk profile of what she had previously been invested in through her employer.

Mrs P didn't contact Scottish Widows so the retirement date on her pension was automatically deferred to 2036. As set out in the letters sent to Mrs P before she reached her SRD, the fund should have remained unchanged if Mrs P didn't contact Scottish Widows – so in the PIA package. However, Scottish Widows made the error of changing the fund to coincide with the auto-deferred retirement date in 2036, rather than leaving the funds as they were. This meant the pension was invested in a higher risk fund – the PPT fund - than had it remained where it was.

The error was identified in May 2020 and at this point Scottish Widows rectified this by moving the pension back to the PIA package, the fund Mrs P should have been in since 2016. It also ran a comparison between the performance of the PIA package and the PPT fund to see if Mrs P had suffered a loss as a result of being in a higher risk fund between 2016 and May 2020. This determined that the higher risk PPT fund Mrs P had been incorrectly invested in between these dates had performed better than the lower risk, PIA package by just over £3000. So Mrs P's plan had £3000 more in it than it would have done had it been correctly invested. Although Scottish Widows switched the pension fund back to the PIA package it left this additional £3000 investment growth in Mrs P's fund. So in effect Mrs P had made a gain of over £3000 as a result of the error Scottish Widows had made.

Mrs P believes the error was made when Scottish Widows changed her pension back to the lower risk fund PIA package without checking with her. She says she would have always wanted the risk profile of her pension to coincide with her new retirement date in 2036.

However, I'm satisfied the error occurred in 2016 when the initial change to the fund was made. As such, I think Scottish Widows was right to switch the pension back from the PPT fund to the PIA package as soon as it identified the error. And I don't think it necessarily needed to check with Mrs P before doing so as her plan should never have been invested in the higher risk PPT fund. As Mrs P's annual statements between 2016 and May 2020 would have shown the increased pension value as a result of higher performance of the PPT fund, I think it was fair of Scottish Widows not to remove the additional investment growth from Mrs P's plan that she had gained as a result of being in the higher risk fund between these dates.

Scottish Widows isn't able to give advice to Mrs P on the fund or risk profile of her pension; it can only take instructions from either Mrs P or an independent financial adviser acting on her behalf. So I wouldn't have expected Scottish Widows to make an assumption that Mrs P would want to have her pension fund risk profile aligned to her new retirement date in 2036, particularly as the letters sent to her in 2016 said that the investment would remain unchanged.

If Mrs P wanted to change the risk profile of her fund to reflect the later retirement date in 2036, she would have been required to provide a fund switch instruction to Scottish Widows, which I note she has done more recently.

I do think Scottish Widows' handling of this matter could have been better. It identified the error in May 2020 but didn't write to Mrs P to let her know until October 2020. So although it had backdated the fund change to May 2020, Mrs P wasn't made aware until 5 months later. And the content of its letter in October was quite vague, merely stating that an error had been identified and corrected. But for reasons explained later, I don't think this delay in notifying Mrs P of the change ultimately caused a delay to the action Mrs P took.

In December 2020 Mrs P called Scottish Widows to discuss her policy. She requested a valuation for her plan and made some general enquiries about the options available to her if she wished to take some money from it in the near future. She also queried the error. In response to this call, Scottish Widows issued several letters. The first letter provided policy information, premium history and a list of available funds. There were also letters providing a transfer quotation and an up to date valuation for Mrs P's pension. And finally there was a letter that confirmed the error that had occurred and what Scottish Widows had done to rectify this. This letter provided details of the fund comparison and said that Mrs P wasn't worse off as a result of the error. However, the table included in the letter showed that the PPT fund had outperformed the PIA package by over £3000. While the letter did also state that the gain had been retained in Mrs P's pension, I do think this could have been clearer.

Finally the letter stated that Scottish Widows believed that its corrective action had reinstated Mrs P's investments in line with the expectation that her risk profile was in line with her original selected retirement date in 2016, rather than the future one in 2036. The letter also invited Mrs P to contact Scottish Widows, should she have any questions.

Mrs P has said that Scottish Widows was wrong to assume that she would want her risk profile to be aligned with her original retirement age. And our investigator thought Mrs P would always have chosen to invest in the PPT fund, if Scottish Widows had told her this was an option. But I'm not persuaded this is the case.

I think it was clear from Scottish Widows' letter that the correction meant the pension was invested in line with the 2016 retirement date. So I'm satisfied Mrs P ought to have been aware of this from December 2020. And despite being advised of this, Mrs P didn't contact Scottish Widows again until November 2021. I think she ultimately complained after seeing her fund, and what she was expected to receive at age 75, reduce. And I'm not persuaded that the complaint or fund switch request would have been made, had Mrs P not seen a drop in her pension value.

Our investigator thought that Scottish Widows should have explained to Mrs P that she could have moved her funds back to the PPT fund if she wanted to. But I don't think there was a requirement for it to do this. As I've said above, Scottish Widows wasn't able to provide advice regarding the investments within Mrs P's pension. So other than letting her know that she could switch her pension fund to any of the investments it offered, I'm not sure I would have expected it to say any more. And I'm conscious that one of the letters issued in December 2020 did list all the available funds Mrs P could invest in and it explained what she needed to do if she wanted to switch funds. So I think she was given information about how to make fund switches.

In addition, prior to making the complaint, I'm not aware that Mrs P had expressed concern to Scottish Widows about the switch. In December 2020 she called and queried what had happened but after receiving the follow up letter, she didn't express concerns about the action Scottish Widows had taken until January 2022.

So overall, while it's disappointing Scottish Widows delayed notifying Mrs P of the error and the corrective action it had taken for over 5 months. And that it was unclear from the initial letter issued in October 2020 what had happened, I don't think this changes the position Mrs P is now in. I'm satisfied that, even if she had been notified of the error and change in May 2020, and the letter issued at that time had been clearer, Mrs P would have only taken action to switch her fund back to PPT after she noticed a reduction in her fund value. She took this action in early 2022 and I don't think it would have happened any sooner, had everything gone as it should have.

For this reason, I don't intend to ask Scottish Widows to complete a calculation to compare the performance of Mrs P's fund since May 2020 with what it would have been worth, had the fund remained in the PPT fund.

As I've said above, I think it's fair that Mrs P retained the gain of over £3000, which her fund made up to May 2020, as a result of being invested incorrectly. I can also see that Scottish Widows has offered Mrs P £250 for inconvenience caused and delays in dealing with her complaint. Having thought carefully about this, I think this is fair in the circumstances and so I don't intend to ask Scottish Widows to do any more than it has already offered to put matters right."

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

Scottish Widows responded and confirmed that it didn't have anything further to add.

Mrs P responded. In summary she said:

- She disagrees with the conclusion that she wouldn't have taken any action, had Scottish Widows' explanation around matters been clearer or she'd been made aware sooner, that her plan wasn't invested in the higher risk fund. She acknowledges that investments can go up and down. But she did not need to take her pension in 2016 and was happy for it to be deferred to 2036. She was happier with a riskier investment. She said she wanted the funds to be in good investments taking into account an SRD 20 years later than the original date of 2016.
- Scottish Widows took four years to realise this perceived error. It didn't call Mrs P to talk her through what options were available or to check her understanding or to let her provide it with an instruction. It made changes to her investments without instruction and waited months to let her know.
- Scottish Widows made an assumption when it moved the funds in the belief that Mrs P expected her risk profile for the plan to be linked to the original selected retirement date of 2016. Where did this belief come from and why didn't it call Mrs P if it was in any doubt?
- Mrs P would like to know what evidence Scottish Widows has to make it believe that

she would want to change her investment to one that wasn't performing as well? Or that having changed her SRD to 20 years later, that she would want her investment aligned to the original date?

- Why can't Scottish Widows do the calculation as near as they can to check what the difference in funds would have been?
- Mrs P has little expertise in these matters. She received a letter out of the blue confirming it has corrected a mistake, there was nothing for her to do. Yet it provided no detail and then only when Mrs P questioned this letter did it provide her with some detail but she was totally confused. She had no idea what to do.
- Most people would have struggled to know what to do for the best and sometimes the only option is to do nothing and wait and see. Having then seen a significant loss of funds in a very short period of time, it would only be natural to question if the mistake and subsequent correction had been responsible. Had Mrs P been presented with enough detail for her to make an informed decision when Scottish Widows first realised its perceived error, she is in no doubt that she would have chosen to stick with the funds that were performing better and to align the risk with her new retirement date of 2036. She really doesn't understand why anyone would choose to do anything different.

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 departing from what I set out in my provisional decision. I'll explain why.

I'd firstly like to explain that in reaching my decision, I've not only considered all the correspondence on file but I've also listened to the calls Mrs P has had with our investigators.

Mrs P thinks that Scottish Widows made an assumption about her investments when it corrected where her funds were invested in May 2020. However, I don't agree that is the case. As I explained in my provisional decision, in the run up to her SRD in 2016, Mrs P was sent a letter dated 15 February 2016. This stated: "*If we don't hear from you before your current retirement date, we'll change your retirement date to age 75* ***and your policy will stay invested as it is now*** [bold is my emphasis]. Nothing in this letter suggested that the pension would be switched to a fund that is aligned to her new SRD.

Mrs P didn't contact Scottish Widows again so her SRD was auto-deferred, as had been explained in the letter. Mrs P explained to our investigator that she understood the SRD was being deferred and that this is what she wanted because this was not her main pension so she didn't need the fund at that time.

I think the misunderstanding has arisen because although the SRD was deferred, as set out in the above letter, the pension should have remained invested where it was: there shouldn't have been a change to the fund she was in. However, Mrs P thinks the fund should have changed at this point to align with her new SRD of 75. But if Mrs P wanted her plan to be invested in a higher risk fund that was aligned to her new SRD, rather than as it had been up to that point, she would have needed to contact Scottish Widows to make a fund switch. Mrs P didn't give Scottish Widows an instruction to move her funds into the PPT fund, or any other package, so they should have remained where they were in the PIA package.

I'm satisfied the switch to the PPT fund was done in error. I don't agree Scottish Widows made an assumption about where Mrs P wanted her funds to be invested, when it made the switch back to the PIA package, after noticing the error in May 2020; Mrs P had never given an instruction for the PIA package to be changed. So Scottish Widows were right to correct the error it had made.

Mrs P said to our investigator that she thought Scottish Widows should have asked her what she wanted to do before making the switch. But I don't think it was required to do this. I think it was right to correct the error as soon as it was identified and to notify Mrs P accordingly.

I know Mrs P says that if Scottish Widows had given her enough information when it identified the error, she would have asked for the funds to be invested in the higher risk fund that was aligned to her later retirement date. But while I accept the initial letter advising her that there had been an error ought to have provided more information. I'm not satisfied that, had this happened, Mrs P's situation would be any different.

Scottish Widows wasn't able to advise Mrs P on where she invested her pension; it was only able to give her information on the funds available. I'm satisfied it did provide accurate information on this in its December 2020 letter. The letter, dated 3 December 2020, explained that Mrs P's pension had been incorrectly invested in a higher risk fund that was aligned to her new SRD in 2036. It said that it had switched the fund back to the lower risk PIA package, which was in line with the initial SRD in 2016. This is the information I would have expected Scottish Widow to have provided Mrs P with. I know Mrs P thinks Scottish Widows should have called her to discuss matters. But it wasn't required to do this and I think it gave her all the information it needed to provide in this letter.

One of our investigators thought Scottish Widows ought to have given Mrs P the option in May 2020 of staying in the higher risk fund where she had been invested or moving back to the lower risk fund, where the pension should always have been. But these are only two of the numerous funds Scottish Widows provides that Mrs P can choose to invest in. Only giving Mrs P the option of choosing between these two could have been construed as Scottish Widows providing guidance to Mrs P on which funds to invest in. But Scottish Widows was the administrator of the plan here and the fund manager. Its role was to invest Mrs P's pension funds as directed and to manage that fund in accordance with its terms and conditions. Scottish Widows had no idea of Mrs P's attitude to risk and therefore wouldn't have known if either of these funds were more suitable for her than any of the other fund it offered.

The letter of 3 December 2020 advised Mrs P of all the funds she had available to her for investment. It also explained what she needed to do if she wanted to switch funds and it said she should contact it if she had any questions. Mrs P says she didn't know what to do so she decided to wait. But even if Scottish Widows had called her at this time, it couldn't have provided guidance on this; Mrs P would have needed to contact an independent financial adviser if she was unsure what to do and wanted advice on where her pension should be invested. It wasn't for Scottish Widows to choose which of its available investments or portfolios might be best suited to Mrs P or may provide the best returns. And Scottish Widows couldn't have predicted how any particular funds would perform in the future nor could it have foreseen external events which generally can affect all investments, so that they are subject to fluctuations depending on market conditions.

Scottish Widows corrected the fund error and placed the pension back in the PIA package – which I'm satisfied was the right thing to do, having never received an instruction to change this fund when the SRD was deferred.

In my provisional decision I said the December 2020 letter could have been clearer in respect of the gain that was being retained in Mrs P's plan, and that's still the case. I think the letter could have explained this side of things a bit better. But as it stands, I think the information around the funds and how these aligned to the relevant SRDs was clear.

And Mrs P has acknowledged that the annual statement in July 2020, showed that her fund value had reduced by more than £6,800 since the statement issued the previous year. And what she was expected to get at age 75 had also significantly reduced. But despite this, she didn't instruct a fund switch until 2022.

The PIA package Mrs P was invested in between May 2020 and when she made the fund switch (and in fact is the package she should have been in after leaving her employer in early 2016) was intended to take a more cautious approach to investing, with the aim of protecting the pension value from any major losses close to retirement. But, while this may have been the aim of the PIA package, it wasn't guaranteed that the fund value wouldn't drop. And as I'm sure Mrs P will be aware, there were significant fluctuations in the financial markets around this time, due primarily to the global pandemic. This had a well-reported and recognised detrimental impact particularly on investments and pension funds. The decrease in Mrs H's fund is in-line with the wider financial performance of the markets. This is not something Scottish Widows could foresee or control, or for which Scottish Widows might be considered responsible.

I think it's also worth pointing out that another factor that will be impacting Mrs P's fund value and what she's expected to receive at her SRD, will be that she is no longer contributing to her plan. However, ongoing charges will continue to be taken from the pension and these will impact the fund value, along with how well the fund she is invested in performs.

I know Mrs P would like Scottish Widows to complete a calculation to see if she has suffered a loss as a result of being in the PIA package between May 2020 and when she switched back to the PPF package in 2022. But I won't be asking it to do this.

Mrs P switched funds at this point after she complained and Scottish Widows said she could switch the fund back if she wished. But I think she had been previously made aware, in December 2020, that she had the option of switching to any of the funds offered, and the PPT fund was included in this fund list. And I note that Mrs P's annual statements in 2020 and 2021 also confirmed that she should review her investments. The statements explained that Mrs P could switch her investments if she wished and they provided details of where she could get further information on this. So I'm satisfied she had been made aware, before 2022, that she could switch fund if she wished.

I don't think Mrs P would have taken any action to switch funds, had the PIA package performed well. So I think her argument here is being raised with the benefit of hindsight. Mrs P has said as much when she has acknowledged that "*most people would have struggled to know what to do for the* best *and sometimes the only option is to do nothing and wait and see*". The crucial thing to point out here is that Scottish Widows couldn't have advised her what to do for the best; it could only give her information on the available funds, which it did. It was for Mrs P, or an independent financial adviser if she had instructed one, to make a decision on where she should invest her pension.

Conclusion

I appreciate Mrs P's strength of feeling about this matter but I'm not asking Scottish Widows to complete a calculation to compare the performance of her fund since May 2020 with what it would have been worth, had the fund remained in the PPT fund.

Mrs P has retained the growth of over £3000 that her plan made as a result of the initial error Scottish Widows made when it incorrectly switched the investment in 2016.

Scottish Widows has offered Mrs P £250 for inconvenience caused and delays in dealing with her complaint. Having thought carefully about this, I think this is fair in the circumstances and so I not asking Scottish Widows to do any more than it has already offered to put matters right.

My final decision

Scottish Widows Limited has already made an offer to pay £250 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Scottish Widows Limited should pay Mrs P £250 if it hasn't already done so.Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 28 September 2023.
Lorna Goulding
Ombudsman