

The complaint

Mr S complains that Scottish Widows Limited did not complete an in-specie transfer from one of his personal pensions to another. And instead sold the funds in one and reinvested the transfer value across the existing funds in the other. Mr S wanted to just move the funds across with no buying and selling.

What happened

I issued a provisional decision dated 25 January 2024 where I set out the background to this complaint and my provisional findings. This is set out below and forms part of this decision:

'Mr S held a number of pensions with Scottish Widows and wished to transfer one plan across to another with the funds simply moving across with it. This is known as an in-specie transfer.'

Mr S had telephone conversations with Scottish Widows (which will be discussed in more detail later) prior to submitting his transfer application electronically on 3 August 2022.

The transfer application required Mr S to confirm he understood the following:

"your transfer payment will be invested in the same way as your existing pension with us. When you transfer to us, your other pensions will be closed. We are not giving you financial advice during this process."

Mr S confirmed he would like to go ahead with the application.

On 9 August Scottish Widows wrote to Mr S to say his previous plan had been disinvested and the transfer value of £4,206.36 had been transferred into the specified existing plan.

On 24 August Mr S contacted Scottish Widows to complain as he felt they had bought and sold units against his wishes and he'd lost investments in two funds that he'd not instructed them to disinvest. Mr S had wanted an in-specie transfer. He now wanted the transfer reversed.

Scottish Widows responded to Mr S's complaint in November 2022, this also dealt with other separate complaint issues that aren't directly relevant to this case. In respect of those other issues, Scottish Widows offered Mr S £275 by way of compensation. In relation to the complaint point relevant here Scottish Widows explained that they'd told Mr S prior to his transfer application that in specie transfers were not an option and they had processed the transfer as per Mr S's instruction.

At that point a decision on whether the transfer could be reversed hadn't been reached but Scottish Widows then confirmed it wouldn't be reversing the transaction.

Mr S didn't agree with Scottish Widows's response.

Our investigator looked into matters, but she didn't think the complaint should be upheld. She explained that she had listened to the calls prior to Mr S requesting the transfer and she'd heard nothing to suggest that Scottish Widows had said an in-specie transfer could be achieved. And whilst Mr S felt this should be an easy thing to do, she explained her understanding of why Scottish Widows didn't offer this. She said Scottish Widows had told Mr S he couldn't do an in-specie transfer.

Mr S didn't accept this. He said he had been told it could be done and had given a clear instruction,

nowhere had he said that his funds could be disinvested and moved into new funds in the other pension. He said Scottish Widows should've been obliged to write to him if it couldn't do this.

No agreement could be reached so the case has been passed to me for a final decision.

What I've provisionally 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.

It's clear that Mr S did want an in-specie transfer and he made Scottish Widows aware of this in a number of calls prior to his instruction.

The first call relevant to the transfer was on 12 May 2022. Having listened to the call Mr S did make clear his intentions but the call handler after taking time to refer to colleagues confirmed that it could not be transferred in-specie. Mr S said he couldn't believe this and made analogies about moving money from a bank account to a bank account. The call handler explained the funds would need to be bought and sold. Mr S wanted to talk to a manager as he couldn't understand why this couldn't be done.

On 3 August, the day Mr S submitted his transfer application, he spoke to another member of Scottish Widows' staff. She told Mr S that an in-specie transfer could not be carried out.

She said her understanding was that as they were invested within the specific account/product, it could not simply be moved into a new account/product. Mr S said that he doesn't understand why this is the case. And said its website says in-specie transfers can be done on some occasions but not for his specific product.

Whilst Mr S made his wishes clear, Scottish Widows were also clear in telling him that it couldn't meet his wishes. And if he transferred it would have to disinvest the funds and the value would be re-invested in his existing plans funds.

Mr S also confirmed in the call that its website said his personal pensions couldn't be used for in-specie transfers. So Mr S was in possession of this knowledge when he submitted his transfer application. The transfer application also asked him to confirm his understanding that the transfer value would be invested the same way as his existing pension, and his other pensions would be closed.

The wording of the agreement seems to be written more for the awareness of customers transferring plans from other providers into Scottish Widows, rather than one Scottish Widows product to another. But in the context of what Mr S had already been told, I think he

ought to have understood this to mean that his existing pension was the pension he was transferring into. And that the pension he was transferring from would be closed.

Mr S said in response to the investigator's view that Scottish Widows had told him he could transfer in-specie. But in all the calls prior to him submitting his application, I've found the evidence to be the opposite. Scottish Widows had been clear in saying an in-specie transfer couldn't be done. And Mr S had said he'd seen on the website that it couldn't be done for his products as well.

That Mr S thinks it ought to offer an in-specie transfer service from one personal pension to another isn't relevant as it had already told him that it couldn't.

Looking at the evidence, Mr S had been told the in-specie transfer couldn't be done and he went ahead and proceeded to transfer in any event. I cannot hold Scottish Widows responsible for this. I don't think it did anything wrong, it gave Mr S clear information and I think it acted fairly and reasonably.

However, I did note that Mr S complained about the transfer when he realised it hadn't been made in-specie, within the 30 day cancellation period. Whilst I wouldn't expect Mr S to be put back into the

funds as if they'd been invested the whole time, as this would allow unfair fund switching practices in terms of using hindsight, I asked Scottish Widows about this and what it would normally do in these circumstances.

Scottish Widows responded to say it had emailed Mr S and offered him the opportunity to either keep the value of the plan as it was now, or to revert to the value had it always remained within the other funds. It also offered to set up a replacement plan and add the value of the units of the old funds back into it as if he'd never transferred. This showed that currently he'd actually received a gain following the transfer, compared to the value of the old funds.

Therefore, I don't think I need to consider this aspect further in terms of the 30 day cancellation period, as Scottish Widows is prepared to put Mr S back into the position of his choice, including the position he would've been in had he not transferred. And he has received a gain due to the funds not being transferred in-specie. So he hasn't suffered a loss, so there is nothing for this service to put right.

In conclusion, I don't think Scottish Widows has made an error. It made it clear it couldn't transfer the funds in-specie and Mr S transferred his funds knowing this was the case.'

Mr S responded to my provisional decision to say he accepts that an in-specie transfer couldn't be done. Perhaps he'd not been clear but his contention was he thought the same units from the same funds he'd transferred from would be bought in the existing pension. He did not expect the funds to change on transfer. He had filled in the transfer form himself but didn't expect this to trump his conversations with Scottish Widows.

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 considered Mr S's comments following my provisional decision, I see no reason to change the conclusions that I set out within it.

I say this because as I set out, having transferred his funds, Mr S had made a gain compared to if he'd kept the funds invested as they were. And in any event Scottish Widows has subsequently offered to put Mr S in the position he says he should've been put in originally.

Even if I felt Scottish Widows had done something wrong, Mr S has gained due to the transfer and so there is nothing required to put things right. Scottish Widows has also offered to reverse the transaction as if those funds had been bought on transfer, although I understand from its calculations that this would mean Mr S would suffer a loss. Mr S could also carry out a fund switch if he wishes to be invested in those funds going forward.

Furthermore, whilst Mr S may have thought that Scottish Widows should re-invest into the funds he'd sold on transfer, I've seen nothing to suggest it said it would do this. The evidence I've seen is it told Mr S an in-specie transfer wasn't possible and the funds would be sold and re-invested in line with the receiving arrangement. It seems some confusion did arise as Mr S thought his transfer request would mean that he kept the funds on transfer but I'm not persuaded that Scottish Widows can be held responsible for this based on the evidence. And again in any event, Mr S seemingly has actually gained from transferring in this manner.

As I don't believe Scottish Widows made an error, Mr S hasn't suffered a loss and Scottish Widows has offered him the opportunity to reverse the fund switch if he wishes to do so, I will not be directing it to do anything to put matters right.

Mr S should get in contact with Scottish Widows directly if he wishes to take up its offer or make any further changes to his pension in relation to his funds.

My final decision

For the reasons explained above, I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 February 2024.

Simon Hollingshead
Ombudsman