

The complaint

Mrs K complains that Scottish Widows Limited trading as Halifax Financial Services (SW) has applied unauthorised charges to her pension policy.

What happened

Mrs K said she set up an income drawdown policy in 2003 with an agreed charge of 0.5%. In fact it had been taking more charges that she was never told about. Her annual statements quoted 0.5% and nothing more. She thought she had suffered a loss of around £5,000 to £6,000 over the life of her policy. She said her original plan booklet said, *'we will tell you about any change to the level of the management charge as soon as we can'*. Her plan was taken out with Bank of Scotland Investment services. She accepted that SW could increase the charges but said it had to tell her if it did and she was not aware that it had.

SW said that the charges were made up of the AMC plus transaction costs incurred by the fund managers. This would have been detailed in the original documentation. The annual statement had a known defect as it disclosed the AMC but not the additional expenses of around 0.05%. It also sent copies of documents that would have been sent at the time and said that the 0.5% charges could be increased at any time but there was no obligation to notify in advance.

The investigator explained the charges were estimated as the actual calculation was done on 31 December each year. He said SW had applied the stated management charge and made further adjustments, deductions and charges which were provided for in the plan booklet. He noted also that mail had been sent to the wrong home address but felt the payment of £150 for this was fair and reasonable. He felt the confusing information about charges had caused distress and £200 would be fair compensation.

Mrs K didn't agree. She said the reply missed her main point which was that the charges were estimated so no one knew what had actually been charged. It had taken additional charges without telling her. Her agreement was for 0.5% which is what the annual statement said. In reality it had been taking more. Their explanations for the charges had been inconsistent and unclear.

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.

There are several issues to consider.

Firstly Mrs K complained that some mail was sent to a wrong address. This does not seem to have caused substantial distress and I think the payment of £150 is fair and reasonable in the circumstances.

Secondly I have considered the reductions applied to Mrs K's policy. I have referred to the total amounts taken from the policy as 'reductions'. I have done this because words such as

costs, charges and expenses, management charges, deductions and adjustments etc have been used in interchangeable ways. By referring to the total amount as 'reductions' I hope it makes my view clear without using language that can have other meaning in this context.

In short Mrs K believes she has been overcharged. That is because she believes she has been charged more than she was informed that she would be. Further she has not, until recently, become aware or been advised that the reductions were in excess of those that she says she was informed about.

The Financial Conduct Authority (FCA) which regulates financial businesses such as SW sets out principles that must be complied with. These include:-

Principle 7 – A firm must pay due regard to the information needs of its clients and communicate information to them in a way that is clear, fair and not misleading.

I have considered the information provided in the light of this principle.

Information sheet

The starting position is the information she was supplied when she transferred around £45,000 into her SW policy in 2003. This was provided by Bank of Scotland Investment Services. The money was invested in 5 pension funds in varying proportions. There was a three-page information sheet attached.

This included a section headed –

What are the charges? This said

'we charge annually a percentage of the value of your investment in each fund as shown in the table below. This is reflected daily in the unit prices.'

It listed each fund as 0.5%.

This is the maximum amount Mrs K believes she should be charged (until informed otherwise).

The information sheet went on in a further section headed '*What effect will the deductions have?*' – this showed the impact based on different levels of investment return.

It went on to say –

What are the deductions for?

- *The deductions include remuneration, charges, expenses and other adjustments.*

I think the list implies that the deductions can be for *more than just* charges otherwise there would be no need to list other types of deductions.

It does not explain what *remuneration, expenses and other adjustments* might be applied nor how much they might be but as charges are only part of the list of deductions, I think it is reasonable to assume they are not limited to the 0.5% disclosed.

Mrs K says that the 0.5% includes remuneration, charges expenses and other adjustments but I don't agree for the reasons given above.

Plan booklet

Mrs K supplied a copy of the plan booklet she said was supplied when she took out the plan. It is from Halifax Life Personal Pension Income drawdown Plan (but then listed as Bank of Scotland Investment Service). Some key parts are as follows.

Section 4 – Funds, investment content and investment account

Section 1 F adjustments; deductions; management charges

*In calculating the value of a fund for the purposes of paragraph 1c, 1d and 1e of this **section** we will make due allowance for:*

- *income received or accrued;*
- *outgoings of whatever nature in respect of any of the investments the fund;*
- *cash as yet uninvested;*
- *any actual, prospective or other liability for taxation;*
- *any levy, loan, charge or cost we consider to be relevant;*
- *any adjustment we consider to be necessary to preserve equity between plans which may be linked to the fund;*
- *taxes, duty and other charges upon acquisition or realisation of an investment of the fund;*
- *any expenses of managing, maintaining and valuing property; and*
- *management charges on the fund;*

provided always that where the assets of one fund include units and other fund we will ensure that no double charging occurs.

We will tell you the level of management charge before the plan starts.

The level of the management charge may be changed from time to time to reflect changes in the costs of selling and administering plans and managing the fund.

The level of the management charge may change for any other valid reason.

We will tell you about any change to the level of management charge as soon as we can.

I think this section shows that the management charge for the fund is only part of the different types of reductions that can be applied to the fund. But that it will notify her of the amount of this before the plan starts. It is noticeable that it doesn't say it will tell her the amount of any other items listed.

Given that the initial 2003 illustration listed a charge of 0.5% for each fund it seems reasonable that this could be the '*management charge*' it told her about before the plan started. I think this shows again that the reductions to the plan can exceed 0.5% in total and the heading to the section lists '*F adjustments; deductions; management charges,*' so must envisage these are broader than just the management charges..

The booklet says it will tell Mrs K about any change to the level of the management charge as soon as we can. But it does not seem that this has changed as the information provided recently reflected a rate of 0.5% which is what was initially disclosed.

Further Section 3 -investment account -section g – Fund variation says

'On request, we will tell you the current administration charges.'

We may change the administration charge to reflect any changes to our costs of efficient variations.

We may also change the administration charge for any other valid reason.'

While this section refers to cancellation of units within a fund I think it does serve to reinforce the position that there are other amounts that can be taken from the fund in addition to the 0.5%.

Charges information

The information SW provided for the amounts taken in the 20/21 year reflect the 0.5% but also show transaction costs and Mrs K says a further amount.

The booklet does not specifically list '*transaction costs*' but I think the list is broad enough to include them. I say that because it refers to '*outgoings of whatever nature in respect of any of the investments of the fund*'.

SW provided further information in early 2023. It said it had taken around £355 in the period from mid-December 2021 to mid-December 2022. These were all fund charges but were estimated due to the method of calculation and the fluctuation in unit prices. I note it says it provides this in the light for the FCA requirement to disclose Fund Charges which are defined as

the on-going figure (OCF) is the total charges consumers pay on their investments (e.g. single assets, funds). It includes the annual management charge (AMC) and any other additional expenses for the management of the fund or asset.

In providing the information it did SW, said that it did this by disclosing an AMC, additional expenses and Transaction costs.

I think the wording of the letter is unhelpful as it used the word charges to refer to different things which makes it harder to understand what it is referring to. It refers to '*charges taken from your plan*' and it refers to *fund charges and other charges*. The fund charges are said to be around £355 and other charges nil. Similarly in the 20/21 period the Fund Charges are shown as around £344 and other charges as nil.

It seems that in the 20 years since the policy was taken out and in the light of the new FCA requirements language has changed and SW is clearly trying to mirror the wording in the FCA requirements.

By heading the letter as about charges it causes further confusion because as we know charges are only one of a number of different types of reductions that can be made. The letters does not refer to these different types simply calling them fund charges and other charges. I think this has only added to the confusion and caused Mrs K concern.

SW argued that because the original paperwork referred to a list of items including charges it showed that the AMC was part of wider deductions because the word charges was plural. I don't find that particularly helpful, but as I have said because charges are just one item in a list of deductions I think it is clear the reductions can be more than just the management charge on the fund of 0.5%.

SW accepted that references to a Base AMC, Additional Expenses and Total AMC has caused confusion. It said a better description was a Total Fund Charge (T AFC) which included the AMC and other expenses less any discount. Again I don't find that helpful for the same reason. It is clear that language has changed over time and has not been used in a consistent and clear manner.

Mrs K agreed that the management charge is one of several items, listed in the booklet but did not agree the AMC was 0.5%. She said the illustration did not refer to a management charge just to a *'percentage value of the investment for each fund as shown in the table below.'* She continues to argue that the inference is that the total charge is 0.5% because it goes on to say *'deductions include remuneration, charges, expenses and other adjustments'*. While I think her point about the AMC is reasonable I don't think it makes a difference to the overall impact because I have already concluded SW can make reductions at a rate greater than 0.5%

Mrs K said a later SW letter from September 2022 confirmed that research costs, salaries etc are included in the 0.5%. Also SW had argued that it could increase the 0.5%. She said it wouldn't need to argue this if nothing had changed. I agree that this is unhelpful but I think it is clear that SW can increase the 0.5% as the initial information said it could. So I don't think this changes my view. In reality it does not seem that it has increased the 0.5%.

Mrs K still didn't think this was clear. She said the breakdown showed a base AMC of 0.5%, additional expenses of 0.05% and transaction cost with no percentage quoted that amounted to around 0.14%. No comment was made about this 0.14% amount. She said the original documentation said that the AMC was 0.5% and that this included *remuneration, charges, expenses and other adjustments*. But I don't agree for the reasons already given.

SW further confirmed the annual statement had a known defect because it didn't articulate the additional expenses which in this case were around 0.05%. I can see that this has not helped the confusion and it is unfortunate it has not been resolved more quickly. But this service cannot tell SW how to run its business.

In summary based on the documentation supplied by Mrs K I am of the view that the position is as follows.

There was a charge of 0.5% on funds and this was disclosed at the start. However SW is able to make further reductions in excess of this amount.

So the total reductions from Mrs K's overall policy can be in excess of 0.5%.

While SW has to notify her of changes to the management charge it does not say this needs to be in advance of any change nor how that notification has to be done.

So I cannot make an award in respect of any reductions in excess of 0.5%.

But I think that SW has poorly explained the reductions and it accepts there is a defect in its annual statement. This is not consistent with its obligation under FCA Principle 7. SW has used different language to explain things which has not helped and added to the confusion.

As I have concluded that SW has not acted in accordance with the principle I can consider an award for financial loss and distress and inconvenience.

For the reasons given, I do not think there has been any financial loss as I have concluded that SW is able to make reductions in excess of the 0.5%. So I am not making an award for any deductions in excess of 0.5%.

However I asked Mrs K what she would have done differently had she known about the level of reductions sooner. She said

She had not transferred her pension since becoming aware of charges in excess of the 0.5% because,

1) She believed the case to be clear cut and SW would agree they had overcharged, and pay back the excess over the 19/20 years, and that future charges would revert to 0.5%.

2) She thought it best to leave the pension fund with SW until the matter was finally resolved, because it may not be easy to pay compensation into a new pension pot with another provider.

3) She first complained in May 2022 and this matter has been ongoing since then, with this service becoming involved in January 2023. Arguments had gone back and forth with SW changing its position on a number of occasions. She had no way of knowing this complaint would still be unresolved after 16 months and had been hanging on hoping for a positive decision. Irrespective of the final decision, Mrs. K said she now intends to move her fund to another provider.

I have considered this but I think the information was there at the start, even if the amounts were not quantified. Nothing has changed and SW has always been able to apply reductions of greater than 0.5%. So it can't be said she relied on that information in remaining with SW.

Mrs K didn't ask about charges until recently, but was always able to do so. I note that she hoped her complaint would be upheld but the response from the business and the investigator has been consistent in not upholding her complaint that she had been overcharged and I have also agreed. There was always a risk the decision might not be what Mrs K hoped. Mrs K wasn't told she could not transfer or that it would impact any compensation payment. So she didn't rely on any statement in deciding not to transfer.

Her assumption about payment of compensation wasn't correct and it would have been possible to pay into a scheme with a new provider, assuming the policy had not been exhausted and paid out in full.

For those reasons I am still of the view that there is no financial loss.

I have considered an award for distress and inconvenience. This is to reflect the impact on Mrs K not to punish SW. It is clear Mrs K has had to spend a lot of time trying to get clear information to understand the position. In many ways the more information and explanation that was provided the more confused the position seemed to become. The poor explanation caused distress to Mrs K. I have also considered that this has carried on for more than one year.

SW has offered to pay various amounts in its correspondence over time, for example £150 for using the wrong address, £100 for delay in dealing with the complaint and £150 for distress and inconvenience and £50 for the error in the annual statement. I don't know

whether all or any of these amount have been paid to Mr K. However overall a think a total award of £450 is fair and reasonable in the circumstances.

My final decision

I uphold this complaint in part. I direct that Scottish Widows Limited (trading as Halifax Financial Services) must within 30 days of this service notifying it that Mrs K has accepted my decision pay to Mrs K a total amount £450, but for the avoidance of doubt to the extent that it has already made payment to her it need only pay any balance to bring the total to £450.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 6 October 2023.

Colette Bewley
Ombudsman