DRN-4247323

The complaint

Mr B complains that Scottish Widows Limited (SWL) is only able to purchase an annuity with his full pension fund rather than just part of his monies.

What happened

In 2017, after taking the tax-free cash from his pension plan, Mr B switched the balance of his pot into a Retirement Account with SWL.

In November 2022, Mr B contacted SWL to ask them to use £100,000 of his £133,000 pension pot to purchase an annuity for him. SWL explained to Mr B that this wasn't an option they'd be able to provide as he'd need to use all the funds within his plan to purchase an annuity with themselves.

Unhappy with what SWL had told him, Mr B decided to formally complain to SWL. In summary, he said that having spoken to Pension Wise, he believed that he should be able to use only a portion of his pension fund to buy an annuity and leave the rest invested. He wanted SWL to look into this further for him.

After reviewing Mr B's complaint, SWL concluded that they were satisfied they'd done nothing wrong and had provided the correct information to him. They repeated what Mr B had already been told by their representative in November 2022 - that in summary, they could only facilitate the purchase of an annuity using the full value of his pension pot. In addition, SWL have since pointed out that should Mr B wish to use only some of his pension to buy an annuity, he could do so using the 'open market option' on his plan. That option allows consumers the option of shopping around to get the best annuity deal on the market.

Mr B was unhappy with SWL's response so he referred his complaint to this service. In summary, he said that he didn't believe there was anything in the terms and conditions that prevented SWL from only using a partial amount of his monies to purchase an annuity. Mr B also explained that he was concerned that if he were to take an annuity with another provider, he'd incur a tax liability.

The complaint was then considered by one of our Investigators. She concluded that SWL had treated Mr B fairly. She went on to say that having looked at the paperwork Mr B had been provided with, it appeared clear to her from what she'd seen that Mr B must use the full fund, rather than part of it, should he wish to use his monies to take out an annuity.

Mr B was unhappy with our Investigator's findings and asked her to look again at her decision. Our Investigator was not persuaded to change her view as she didn't believe Mr B had presented any new arguments she'd not already considered or responded to. So, Mr B then asked the Investigator to pass the case to an Ombudsman to review that outcome.

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 appreciate Mr B is frustrated that SWL wouldn't arrange an annuity with a portion of his pension pot. However, for me to be able to uphold Mr B's complaint, I have to be satisfied that the business, in this case SWL, have done something wrong. And from what I've seen, I don't think they have. So, whilst I appreciate this'll likely come as a disappointment to Mr B, I'm not upholding his complaint and it's for broadly the same reasons as our Investigator set out. I'll explain why.

Before I do, I should point out that in his complaint to SWL, Mr B also explained that he was unhappy about the performance of the investments within his pension. Just as our Investigator explained, I too won't be looking into those concerns either because Mr B didn't raise investment performance as being an issue in his original complaint referral to us.

Mr B had already taken the tax-free cash from his pension fund and so the remaining monies were classed as being 'crystalised funds'. In their submissions to this service, SWL have explained that they don't offer consumers the opportunity to only use a portion of their crystalised funds to purchase an annuity. SWL stated that in those instances, the consumer would need to use the 'open market option' and engage an IFA.

So, just because SWL wasn't able to offer Mr B the option of using only a portion of his funds for annuity purchase, that doesn't prevent him from getting what he wants elsewhere by buying an annuity from another provider. The 'open market option' on his pension gives him the opportunity to effectively shop around annuity providers and select the business that's able to provide the best income for his given pot of pension. Mr B would need to speak to a financial adviser who deals in this area of the market, but it's important to understand that just because SWL can't offer that option to Mr B, it doesn't mean he's been disadvantaged – that's because he can get what he wants elsewhere.

Mr B has pointed to wording in SWLs documentation that he believes confirms he's able to use just some of his monies to purchase an annuity. The wording he shared stated: "*You can use some or all of your account to provide a regular, guaranteed taxable income for the rest of your life by buying an annuity from us or another provider*". However, within the Retirement Account brochure - which is the document Mr B was provided with at the time he took out the SWL pension, there's a further explanation provided in addition to that sentence. The same text above is used but then it also goes on to say: "*if you do this, you can normally take up to 25% of the amount you use as a tax-free cash sum. The rest is used to buy the annuity*".

SWL has highlighted this requirement to Mr B previously. When he extracted the tax-free cash from his pension in 2017, SWL sent Mr B a letter. In that correspondence, they explained that after taking the tax-free cash, the balance of his funds would need to be used to purchase an annuity. It states: "*normally, up to 25% of your pension savings can be taken as a tax-free cash lump sum. The remainder is then used to provide an income for life (your annuity), which will be taxed*".

So, it seems clear to me from the documentation that SWL have provided to Mr B, that should he opt to take a guaranteed income for life through an annuity with them, he must use all of his funds within his pension pot to do so. The Retirement Account brochure also highlights that should Mr B wish, he could take his annuity with a different provider than themselves.

But, I'm satisfied that Mr B already knows he can take his annuity with another provider because he explained that he's concerned that if he were to take one with a third party rather than SWL, he'd suffer a tax penalty. However, that's not the case. Regardless of whether Mr B took an income through flexible access drawdown or via an annuity with either SWL or any other business, he'd still have to pay income tax but only at his highest marginal rate. There wouldn't be a tax penalty for switching from one provider to another.

I'm satisfied that SWL's documentation is clear on this particular issue and as such, I won't be upholding Mr B's complaint.

My final decision

I don't uphold the complaint and do not require Scottish Widows Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 6 September 2023.

Simon Fox
Ombudsman