DRN-4384668

The complaint

Mr T has complained that Scottish Widows Limited sold investments in his pension without his permission. Mr T claims that he has suffered a financial loss as a result.

What happened

Mr T held a self-invested personal pension (SIPP) with Scottish Widows. Mr T held a portfolio of funds in his SIPP as well as a direct investment in commercial property.

In August 2022 Scottish Widows wrote to Mr T's financial adviser to tell him that from 24 December 2022 it would no longer be possible for commercial property to be held as an investment in the Scottish Widows SIPP.

In their letter Scottish Widows set out details of options open to Mr T. Scottish Widows said that Mr T could transfer his SIPP to a new SIPP provider of his choice, or he could transfer his SIPP to the SIPP provider who already administered the commercial property investment within the Scottish Widows SIPP. I will refer to that SIPP provider as Firm A in this letter.

Scottish Widows said that Mr T could transfer his whole Scottish Widows SIPP to a new SIPP, or he could make a partial transfer of his SIPP. This would mean that Mr T would transfer his commercial property investment only to a new SIPP and retain his fund investments within his Scottish Widows SIPP.

Finally, Scottish Widows said that as a further option, Mr T could sell his commercial property investment and then retain the sale proceeds together with his fund investments in his Scottish Widows SIPP.

On advice from his financial adviser Mr T decided to transfer his whole SIPP to Firm A.

On 27 September 2022 Firm A wrote to Scottish Widows about Mr T's pension transfer. In their letter Firm A told Scottish Widows that the commercial property was to be transferred in specie. The letter went on to say "***Transferring cash*** *Please transfer the cash element of the fund to the following bank account:*" Firm A then set out details of the bank account to which the cash transfer should be paid into.

On 14 October 2022 Mr T signed Scottish Widows' SIPP transfer discharge form so that his SIPP transfer could proceed.

In answer to the question on the discharge form, "*Is any part of this transfer to be a non-monetary (in specie) transfer?*" Mr T had the option of ticking a "*Yes*" or "*No*" answer. Mr T ticked the answer "*Yes*", but underneath this wrote *"(Commercial Property Only) The Investment funds are to be sold and paid in cash"* onto the discharge form.

On 18 October 2022, Scottish Widows received further discharge paperwork from Firm A. Scottish Widows then replied to Firm A on 25 October 2022. In their reply Scottish Widows said: "*Thank you for the discharge forms which were returned to us however we are unable to accept them. This is due to the details on the forms being incorrect when they were issued. Please find attached the discharge forms which we require to be completed and returned to SW. They were originally issued to the IFA on 11.10.2022*."

On 27 October 2022 Scottish Widows wrote to both Mr T and his financial adviser to say that they'd sold Mr T's investment in one of his fund holdings. On 28 October 2022 Scottish Widows wrote to both Mr T and his financial adviser again to say that they'd sold Mr T's remaining fund investment portfolio.

On 28 October 2022 Scottish Widows wrote to both Mr T and his financial adviser to say that they'd made a change to Mr T's investment choice for his regular pension contributions. Scottish Widows said that with effect from the next contribution, 100% of Mr T's regular pension contributions would be invested in Scottish Widows' Control Account, which Scottish Widows has said is a cash fund.

On 11 November 2022 Scottish Widows wrote to Mr T and said: "*We have today requested an update on the progress of your in-specie transfer and will update you shortly.
Due to the Commercial Property being a 3rd party and also that that this is an in- specie transfer it will take longer to complete than a normal transfer. We will keep you updated on the progress of this transfer request on a regular basis*".

On 28 November 2022 Scottish Widows wrote to Mr T again to say: "*We issued a request to (Firm A) requesting an update on the in-specie transfer. On review of the file I can see that the solicitor has been instructed and the report on title completed but it does look like we may be waiting for the environmental report. Our Property Team are also discussing some property details for the transfer with the client*".

On 15 December 2022 Firm A contacted Scottish Widows to ask if a partial transfer of Mr T's Scottish Widows SIPP was available.

On 19 December 2022 Mr T's financial adviser contacted Scottish Widows to ask that a partial transfer to Firm A proceed, so that the monies realised from the fund sales could be transferred to Firm A.

On 22 December 2022 Scottish Widows wrote to Mr T to confirm that a partial transfer of his Scottish Widows SIPP had been completed. Scottish Widows also explained that the balance of Mr T's Scottish Widows SIPP, which was Mr T's direct investment in commercial property, would be transferred once it was possible to do so.

On 4 July 2023, Scottish Widows completed the transfer of the remainder of Mr T's SIPP to his Firm A SIPP.

Mr T's financial adviser complained to Scottish Widows on 19 December 2022, on Mr T's behalf, about Mr T's fund portfolio being sold in October 2022, but the cash proceeds from these sales not being transferred to his Firm A SIPP until December 2022. Mr T claimed that as the proceeds from these sales had been held in cash, he had been out of the market during this period. Mr T also claimed that as a result he had lost out on investment returns.

Scottish Widows responded to Mr T's financial adviser about Mr T's complaint on 12 July 2023. In their response letter Scottish Widows said:

"*Thanks for getting in touch on behalf of (Mr T) about the length of time it's taken to process this request was exceptional, we processed the funds without a valid transfer request and we left funds in the Retirement Account (RA) control account without telling you. We haven't been able to talk about this, but I agree with this part of your complaint and want to put things right.*

Scottish Widows went on to say in their response letter:

"***We're paying (Mr T) £300.00***
I'm sorry we didn't give you better service. To make up for delay and poor service issues we've caused, I'm arranging to pay (Mr T) £300.00. A cheque will be with him within the next 10 days along with a copy of this letter.

We've ensured (Mr T) wasn't financially disadvantaged
After reviewing the complex notes in your case, I agree it's taken an exceptional length of time to process this request, we moved trades into the RA control account on 26 October and 28 October 2022, We didn't tell you about this until 19 December 2022. As a result, we've done calculations to ensure (Mr T) hasn't suffered financially due to our error. He's better off by £6,563.73, therefore we haven't made any changes".

Mr T wasn't happy with Scottish Widows response to his complaint. Mr T believed that he had suffered a financial loss. He therefore brought his complaint to the Financial Ombudsman Service.

One of our Investigators reviewed Mr T's complaint. Their initial view was that as Scottish Widows had paid Mr T £300 for the poor service he'd received and had completed a loss assessment which had shown that Mr T hadn't suffered a financial loss, then Scottish Widows need not take any further action.

Mr T, through his financial adviser, didn't agree with the Investigator's view. Mr T's financial adviser thought that Scottish Widows loss assessment was wrong and Mr T had suffered a financial loss. Mr T's financial adviser thought that Scottish Widows had misread the outcome of their own calculations, as the £6,563.73 calculated by Scottish Widows was in fact a loss.

Our Investigator asked Scottish Widows to review their loss assessment. Scottish Widows replied to say that their loss calculation had been carried out "*hypothetically*" and that Mr T's financial adviser would have been aware that Mr T's fund portfolio had been sold in October 2022 when Scottish Widows wrote to him to tell him of the sales.

Following Scottish Widows response our Investigator issued a second view. In this second view the Investigator said that Scottish Widows should now put Mr T back in the position he would have been in had they not sold Mr T's investment fund portfolio in October 2022, and instead his funds had remained invested until the partial transfer was completed in December 2022.

Scottish Widows didn't accept the Investigator's view. The complaint has therefore been brought to an Ombudsman.

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.

Scottish Widows wrote to Mr T's financial adviser in August 2022 to tell him that Mr T could no longer hold a commercial property investment in his Scottish Widows SIPP. Scottish Widows set out options open to Mr T, which was to sell the commercial property and keep his SIPP with Scottish Widows, or else transfer his SIPP to another SIPP provider, either partially or wholly.

As Scottish Widows had decided that commercial property could no longer be held in their SIPP then, unless Mr T wanted to sell the commercial property in his SIPP, I think that Mr T had no choice but to transfer his SIPP to another SIPP provider, either partially or wholly.

I therefore think it reasonable that Scottish Widows would have known the reason why Mr T was transferring his Scottish Widows SIPP to a new SIPP provider.

In their letter of August 2022 Scottish Widows said:

"We've listed your clients' options below. We're asking your clients to let us know what they'd like to do, by calling us.

- *They could transfer all of the holdings within their Retirement Account, or just the commercial property it invests in, to a (Firm A) Self Invested Personal Pension (SIPP). (Firm A) currently administers the commercial property held in their Retirement Account on their behalf, so is familiar with the property.*
- *They could transfer all of the holdings within their Retirement Account, or just the commercial property it invests in, to a new SIPP provider of their choice.*
- *They could remain invested in their Retirement Account and sell all the commercial property it holds."*

As Scottish Widows had set out transferring to Firm A as the first option above, then I think it reasonable that Scottish Widows would have also understood why Mr T had decided to transfer the holdings in his Scottish Widows SIPP to Firm A.

Mr T sent his completed SIPP transfer discharge form to Scottish Widows in October 2022. In answer to the question, "*Is any part of this transfer to be a non-monetary (in specie) transfer?*", Mr T had written: *"(Commercial Property Only) The Investment funds are to be sold and paid in cash"* onto the discharge form.

Scottish Widows has said that their process is to disinvest funds on receipt of a transfer discharge form. Mr T returned his discharge form to Scottish Widows in October 2022, so Scottish Widows have said that is why they sold the funds in Mr T's SIPP in October 2022.

But Scottish Widows has also said: "*October 2022- Form received stating part of this transfer to be non monetary – yes (Commercial Property only) – investment funds are to be sold and paid in cash. This effectively means the control account. This was carried out*".

Scottish Widows has also said: "*The SW discharge forms has the is any part of this transfer to be in-specie box – ticked. Also written on the SW discharge forms was a note instructing us to sell the FS and SW funds as cash. We would have sold the FS and SW funds anyway as only the Commercial Property was to be in-specie and this was a valid disinvestment instruction*".

I think that Scottish Widows is saying that the wording that Mr T entered onto the discharge form was an instruction for them sell his funds and hold the proceeds as cash. But I don't think this is right. I think that Mr T is saying that his fund investments were to be transferred in cash, and not in specie. Only the commercial property investment was to be transferred in specie.

I think that Scottish Widows has also said that they were unable to transfer the fund investments in-specie in any event, so the funds would have been transferred as cash regardless of the comment added to the discharge form by Mr T.

As I've said above, Mr T was transferring his Scottish Widows SIPP because Scottish Widows had decided that they would no longer allow commercial property to be held as an investment in their SIPP. As I think Scottish Widows was aware why Mr T's SIPP was being transferred then I think it reasonable that they would also have been aware that Mr T's commercial property was being transferred in specie.

I also think that as Mr T's commercial property investment was being transferred in-specie, then Scottish Widows would have been aware of the longer timescales involved in completing an in-specie transfer of a commercial property investment.

In the notes section of Scottish Widows transfer discharge form, it says: "*For some in-specie transfers, there may be a delay in making the transfer payment depending on the type of assets involved*".

The in-specie transfer of Mr T's commercial property was not completed until early July 2023, so therefore took over eight months to complete.

When Scottish Widows replied to Mr T's complaint in July 2022, they said that they hadn't told Mr T or his financial adviser about the fund sales until 19 December 2022. However, Scottish Widows has now said that once the funds were sold, they wrote to both Mr T and his financial adviser about the sales. Scottish Widows has added that "*Therefore it was the IFA/Customer responsibility to ask us to invest the funds. We cannot invest funds without permission?*"

But I don't think that Mr T or his financial adviser asked Scottish Widows to sell the funds in October 2022. Scottish Widows has said that it's their standard practice to sell funds on receipt of a transfer discharge form. However, as I've said above, I think that Scottish Widows would have been aware why Mr T was transferring his SIPP, and that part of the transfer was an in-specie commercial property transfer that would take some time to complete.

Firm A had written to Scottish Widows on 27 September 2022 and had given Scottish Widows details of the bank account that Mr T's cash transfer was to be sent to. I therefore think that Scottish Widows already had the information needed for a partial transfer to proceed as soon as Mr T's fund investments were sold in October 2022.

Mr T's financial adviser has said that he was initially told by Scottish Widows that a partial transfer was not possible. However, Firm A and Mr T's financial adviser were told in December 2022 that a partial transfer was possible, and as a result the partial transfer of the fund sale proceeds in Mr T's Scottish Widows SIPP was completed in December 2022.

In relation to the offer of £300 compensation for poor service which Scottish Widows made in their response to Mr T's complaint in July 2022, Scottish Widows has recently said: "*The £300 we paid was for poor service as the IFA said he was originally told we could not transfer the liquid assets to (Firm A) immediately and was later told he could have*".

However, Scottish Widows has also said: "*We have confirmed we incorrectly admitted we had made an error – we paid £300 for this 'error' – which in hindsight we should not have done because we did not make any errors*?"

I think that Scottish Widows has given two different answers as to why they paid Mr T £300 compensation. I don't think it unreasonable for Scottish Widows to know the reason they paid £300 to Mr T.

However, as the more recent response from Scottish Widows is that they paid £300 because Mr T's financial adviser said that he was told that he could not transfer the liquid assets immediately, but was subsequently told that this was possible, I think on balance it's more likely that is why they paid £300 to Mr T.

I think it's reasonable to assume that if Mr T's financial adviser had been told by Scottish Widows in October 2022 that a partial transfer was possible, then it's likely that he would have instructed Scottish Widows to go ahead and immediately complete a partial transfer. I think that this would have meant that the partial transfer from Mr T's Scottish Widows SIPP to Firm A would've been completed in October 2022, rather than in December 2022.

I say this because when Mr T's financial adviser was told in December 2022 that a partial transfer of the cash proceeds was possible, instructions were then given for the partial transfer to immediately proceed.

Scottish Widows has said that they wrote to both Mr T and his financial adviser in October 2022 to tell them that Mr T's funds had been sold. I've seen copies of the letters and they appear to be correctly addressed. I therefore think it likely that the letters were received by Mr T and his financial adviser.

Two letters were sent by Scottish Widows to Mr T and his financial adviser about fund sales in October 2022. Each letter said: "*We have amended the investment choice for the above Retirement Account as detailed below:"* Each letter then listed the investments that Scottish Widows had sold.

However, as I've said above, Scottish Widows then took no further action after they had completed the fund sales. Instead, they held the proceeds from the fund sales as cash.

As I've also said above, Scottish Widows initiated the reason why Mr T had to move his SIPP away from Scottish Widows, which was because Scottish Widows decided that they would no longer allow commercial property investment in their SIPP.

I've also said above that I think Scottish Widows would have understood why Mr T was transferring his SIPP to Firm A, and that the transfer was made up of funds, to be transferred as cash, and a commercial property to be transferred in-specie. I've also said that I think Scottish Widows would have understood that the commercial property in-specie transfer would take some time to complete.

I therefore think that, given these circumstances, it would not have been unreasonable for Scottish Widows to have done more than just write to Mr T and his financial adviser to tell them that funds had been sold. Instead, given the circumstances applying to Mr T's SIPP transfer, I think that it would have been reasonable for Scottish Widows to have done more to help Mr T to successfully complete his SIPP transfer.

I think that, given the circumstances that I've outlined above, it would have been reasonable for Scottish Widows to have asked Mr T, or his financial adviser, if Mr T's funds should have been sold on receipt of the discharge form, or retained until the commercial property in-specie transfer was complete. Or alternatively, once Mr T's funds had been sold, I think it reasonable that Scottish Widows could have asked Mr T or his financial adviser, if the fund sale proceeds should be transferred to Firm A straightaway.

In their response letter to Mr T's complaint, Scottish Widows said: "*We've ensured (Mr T) wasn't financially disadvantaged. After reviewing the complex notes in your case, I agree it's taken an exceptional length of time to process this request, we moved trades into the RA control account on 26 October and 28 October 2022, We didn't tell you about this until 19 December 2022. As a result, we've done calculations to ensure (Mr T) hasn't suffered financially due to our error. He's better off by £6,563.73, therefore we haven't made any changes*".

I think that Scottish Widows was saying in their response letter that they had completed their loss assessment and this assessment showed that Mr T was better off by £6,563.73 due to Mr T's funds being sold in October 2022, instead of December 2022.

Mr T's financial adviser questioned the conclusion of Scottish Widows loss assessment. In response Scottish Widows has now said that their loss assessment was "*hypothetical*". I am however not sure of what Scottish Widows mean when they say that the loss assessment was "*hypothetical*".

I've seen the loss assessment calculations completed by Scottish Widows and these compare the actual unit prices used when Mr T's funds were sold in October 2022 against the unit prices that would have applied if Mr T's funds had been sold in December 2022. I therefore think that these are actual calculations based on actual unit prices and is therefore an actual loss assessment, and not a "*hypothetical*" loss assessment.

Having studied Scottish Widows loss assessment calculations, I think they show that if Mr T's funds had been sold in December 2022, then the sum realised would have been £6,563.73 higher than the sum that was realised when the actual sales were completed in October 2022. I therefore think that Scottish Widows loss assessment shows that Mr T was worse off due to his funds being sold in October 2022 instead of December 2022.

In view of the above, I don't think Mr T has been treated either fairly or reasonably by Scottish Widows. I also think that Mr T has potentially suffered a financial loss as a result.

I am therefore upholding Mr T's complaint against Scottish Widows.

Putting things right

I think that a reasonable approach would be for Scottish Widows to put Mr T back in the position he would have been in, as far as is reasonably possible, had it not been for their failings. I think this would have meant Mr T's fund investments would've remained invested until Scottish Widows completed the partial transfer of Mr T's SIPP to Firm A in December 2022.

Scottish Widows should therefore make an assessment to consider what, if any, losses Mr T suffered as a result of their errors. Scottish Widows should:

- Calculate the total actual value that was realised when Scottish Widows completed the sale of all Mr T's funds in October 2022. This is figure "X".

- Calculate the notional value of Mr T’s funds had they been sold on 19 December 2022, which is the date that Scottish Widows completed the partial transfer of Mr T’s Retirement Account to Firm A. I will also refer to 19 December 2022 as the “end date”. This notional value is figure “Y”.

- The notional value (“Y”) should be compared with the actual value (“X”). If the actual value (“X”) is greater than the notional value (“Y”), no compensation is payable. If the notional value (“Y”) is greater than the actual value (“X”), there is a loss and compensation is payable.

- If, having completed their calculations, Scottish Widows identify a loss they should also pay interest on this loss, calculated from the end date to the date of settlement at 8% simple.

If there is a loss, Scottish Widows should pay into Mr T’s pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief.

Compensation should not be paid into Mr T’s pension plan if it would conflict with any existing protection or allowance. If Scottish Widows is unable to pay the compensation into Mr T's pension plan, it should pay that amount directly to him. However, had it been possible to pay into the plan, it would have provided Mr T with a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

This is an adjustment to ensure the compensation is a fair amount, it isn’t a payment of tax to HMRC, so Mr T won’t be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age. I think that it’s reasonable to assume that Mr T will be a basic rate income tax payer, so the reduction would equal 20%.

However, if Mr T would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Scottish Widows should also provide Mr T and his financial adviser with a straightforward breakdown of their loss assessment calculations, once completed.

Finally, if Scottish Widows has not yet paid the compensation of £300 that they said they would pay Mr T in July 2022, then they should now make this payment to him.

My final decision

My final decision is that I uphold Mr T’s complaint against Scottish Widows Limited and Scottish Widows Limited should now compensate Mr T as I’ve detailed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 31 January 2024.

Ian Barton
Ombudsman