

The complaint

Miss B complained that Scottish Widows Limited (Scottish Widows) has introduced a significant delay into the transfer of her pension benefits to a new provider. She is seeking compensation for the financial loss she believes she has suffered.

What happened

I issued my Provisional decision in November 2023, the relevant parts of which are reproduced below and form part of my decision:

On 28 August 2022, Miss B decided to transfer her pension benefits from Scottish Widows to a new provider (Scheme A). She mistakenly applied not only to transfer the benefits from Scottish Widows but she also applied to transfer pension benefits from Scheme A into her Scottish Widows pension plan. Realising her mistake, she contacted Scottish Widows to inform it that she only required a transfer out and the transfer in from Scheme A had been requested in error. Scottish Widows confirmed to Miss B on 30 August that only the request for the transfer out would be processed.

The transfer of Miss B's benefits, around £500, was completed on 30 August 2022. Subsequently, however, Miss B became aware that scheme A had transferred these benefits back to Scottish Widows on 23 September 2022, together with around £1,800 of other pension benefits she already held with it. As her policy with Scottish Widows had been closed, a new policy was set up to accept the transfer in. The c£500 she had transferred out was invested into this policy and a process was put in place to transfer the remaining c£1,800 back to Scheme A. Unfortunately this transfer was unsuccessful and the money was moved instead to a suspense account.

Miss B subsequently contacted Scottish Widows on 5 October to complain about it accepting the transfer, and subsequently on 31 October and 22 December to try to arrange for the transfer of benefits to be reversed, and the funds sent back to Scheme A. Scottish Widows acknowledged to her that it should not have accepted this inward transfer of benefits as she had previously confirmed to it that the instruction she had given had been made in error.

Scottish Widows was, however, unable to locate the c£1,800 that it had intended to send back to Scheme A until 9 March 2023, when it located that money in the suspense account it had been moved to in September 2022. It attempted once more to return these funds to Scheme A on 4 April 2023. However, as Scheme A had closed Miss B's pension when it transferred the funds back to Scottish Widows, the transfer failed once more and the funds were then once again held in a suspense account, rather than being invested into Miss B's Scottish Widows pension plan.

Scottish Widows sent Miss B a final response to her complaint on 13 April 2023. It upheld her complaint and awarded her £514.16 compensation in respect of the distress and inconvenience it had caused her. Scottish Widows apologised to Miss B and offered to undertake a financial loss calculation to ensure that she would be put back into the position that she would have been if it were not for the mistakes it had made. It stated:

To ensure that you have not been financially disadvantaged, please arrange for [Scheme A] to provide pertinent details to us on their headed paper. Aside from the applicable date, the information required will need to include the amount(s) invested, into what fund(s) and the share price(s) of them that you received. In addition to this, I will also need the hypothetical share price(s) for the same funds that you could have been entitled to from 23 September 2022 when the transfer came into us incorrectly.

At the time it issued the final response, it was unaware that the transfer of the c£1,800 back to Scheme A had failed, and that it still retained the money in a suspense account.

Miss B called Scheme A on 26 April and was informed that the transfer had failed once again. She was unhappy with the final response from Scottish Widows and brought her complaint to this service. Our investigator subsequently reviewed all the evidence in this case and felt that Scottish Widows response and offer of compensation was fair in the circumstances.

Miss B disagreed with our investigator's view as the situation was not yet resolved. She suggested that to settle her complaint, Scottish Widows should send the outstanding funds to her Scheme A pension policy and subsequently carry out a loss assessment which should include the funds transferred in error by Scheme A to Scottish Widows and subsequently held in the suspense account (c£1,800).

Scottish Widows disagreed, saying that it believed its liability should be limited to the c£500 that Miss B had instructed it to send to Scheme A. It considered that Scheme A was responsible for the error in also transferring the other c£1,800 and Miss B should complain to it to make good any financial loss she had suffered as a result.

As both Miss B and Scottish Widows disagreed with our investigator's view the complaint has been passed to me to make a final decision.

I wrote to Scottish Widows requesting clarification on some aspects of the complaint and to enquire as to whether the pension funds had successfully been transferred to Scheme A. Scottish Widows informed me that Scheme A had contacted it on 12 October 2023 to request a transfer of Miss B's pension benefits to a new policy it had established for her. The c£500, which included an element of investment growth was subsequently transferred to Scheme A. The c£1,800 was not, however transferred at the same time.

Scottish Widows reiterated its offer of compensation to Miss B and confirmed that once it had completed the transfer of funds to Scheme A and received the relevant information from Scheme A it would carry out a financial loss calculation to ensure that Miss B was correctly compensated for the time her funds had not been invested as they should have been. This appears to be at odds with its response to our investigator's view, when it limited compensation to the c£500, and suggested that Miss B should complain to Scheme A about compensation relating to the c£1,800 that was transferred to it in error.

Following my provisional decision, both Scottish Widows and Miss B responded. Scottish Widows wrote to accept my decision. Miss B wrote to explain that the situation was still unresolved. She reported that Scottish Widows had transferred the outstanding funds to scheme A but had not used the reference number it had provided and that scheme A was unable to identify the funds to allocate them to her policy.

I subsequently contacted Scottish Widows and it stated that it has been in contact with Scheme A and that the funds can now be allocated to Miss B's policy. It did, however, say that it had transferred an extra c£500 in error that it would not seek to recover, but would take into account in the calculation of Miss B's financial loss.

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, and considering the view of our investigator, I intend to uphold Miss B's complaint. I have given consideration to a fair and reasonable form of redress that Scottish Widows should offer to Miss B. Given the uncertainty about Scottish Widows offer of compensation, I think it is appropriate to give both Miss B and Scottish Widows time to consider my reasoning on this before I make my final decision.

I will explain here how I have reached my decision.

Firstly, I think it's important to note that Scottish Widows accepts that it is responsible for making errors that have led to Miss B's pension transfer being mishandled, which has caused her both distress and inconvenience as well as a potential financial loss. What I have to decide here is whether all of the potential losses that Miss B has suffered are as a direct result of mistakes made by Scottish Widows, and if not the extent to which it should take responsibility for compensating her for these mistakes.

Scottish Widows was not the only party which made mistakes.

Looking at the key mistakes that were made in this process, the first one was made by Miss B herself, when she requested both to transfer out her Scottish Widows benefits and transfer them in. She did, however, recognise the mistake she made and took immediate steps to rectify it by contacting Scottish Widows which informed her that it would not allow a transfer in from Scheme A to take place. I think that it's reasonable to find that Miss B's mistake should not have had a bearing on what was to follow.

Scottish Widows did, however, allow the transfer in of benefits from Scheme A to take place on 23 September 2022. It set up a new policy to accept the c£500 it had previously transferred out to Scheme A, and sought to pay the remaining c£1,800 back to Scheme A. This payment failed, however, and the money was placed in a suspense account, where it remained until it was located on 9 March 2023. Scottish Widows sought to transfer the funds back to Scheme A, but this transfer also failed as Aviva had closed Miss B's account with it. The returned funds were once again placed in a suspense account.

At the time of writing this decision, Scottish Widows had still not returned the c£1,800, although Miss B's c£500 had been successfully sent back to Scheme A.

Although Scheme A originally transferred the funds to Scottish Widows in error, I think that it's reasonable that Scottish Widows should have been able to identify where the funds were held in its accounts and return that money within a relatively short period of time. Having stated in its final response to Miss B's complaint on 13 April 2023 that it should not have accepted the transfer from Scheme A and then failing to return the money for over a year, I find that Scottish Widows should indeed compensate Miss B for any financial loss she has suffered from her funds not being invested as they should have been.

In terms of the compensation Scottish Widows has made of £514.06 in respect of Miss B's distress and inconvenience, I find that this is an appropriate amount in the circumstances of this complaint.

I note that Scottish Widows has finally transferred the funds back to Scheme A, which should now be able to credit the funds to Miss B's policy. It has, in fact, transferred an extra £514.06

in addition to the outstanding amount. It suggests that it does not seek to recover this money, but take this sum into account when calculating Miss B's financial loss. In the interests of resolving this situation for Miss B, I find that this is a sensible approach for it to take.

Putting things right

For the reasons given, I'm satisfied that the complaint should be upheld.

My aim is to put Miss B back in the position she would have been in, had her funds been correctly invested in her pension plan with Scheme A. To do this, Scottish Widows should:

- Ensure that the remaining c£1,800 has been correctly transferred back to Miss B's pension policy with Scheme A. If this is still not resolved for any reason, to undertake to complete this transfer as soon as practical.
- Undertake a loss assessment as described in its final response to Miss B's complaint on 13 April 2023. That is: Compare the actual value of Miss B's pension benefits with the notional value if those monies had been invested in her pension policy with Scheme A from 23 September 2022 to the date the funds were transferred back to Scheme A. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable. For the sum of c£500 this period is from 23 September 2022 to 12 October 2023. For the sum of c£1,800 this is for the period from 23 September 2022 until the funds are returned to Miss B's pension with Scheme A.
- If the calculation demonstrates a loss, the compensation amount should normally be paid into Miss B's pension plan with Scheme A. If this is not possible, any compensation amount should be paid directly to Miss B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid in retirement. 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this. If Miss B has reason to believe that her income tax rate is likely to be different to this, she should inform Scottish Widows of this as soon as practicable.
- Interest should be added to any compensation for financial loss due at the rate of 8% simple from the date of my final decision until the date of settlement.
- Scottish Widows should pay Miss B a total of £514.06 in respect of the distress and inconvenience she has suffered including any payment it has already made to her.

My final decision

For the reasons explained above, I uphold the complaint.

As a result, Scottish Widows should provide compensation to Miss B as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 1 April 2024.

Bill Catchpole
Ombudsman