

Ombudsman's Determination

Applicant	Miss N
Scheme	Scottish Widows Executive Personal Pension Plan (the Plan)
Respondent	Scottish Widows

Outcome

1. I do not uphold Miss N's complaint and no further action is required by Scottish Widows.

Complaint summary

2. Miss N has complained that Scottish Widows would not correspond with her Independent financial adviser (**the IFA**) in connection with the Plan or complete a transfer request to Old Mutual Wealth Life and Pensions Ltd (**Old Mutual**).

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 26 March 1998, the Plan was established. The Plan is an Executive Pension Plan (**EPP**) which is a savings plan set up by an employer for key employees. An EPP is established by a Declaration of Trust. The Trustees of an EPP are usually the directors of a company. Miss N was a company director and a Trustee of the Plan.
5. On 22 May 2008, Miss N informed Scottish Widows that the company had been dissolved and that all correspondence regarding the Plan should be sent to her home address.
6. On 1 December 2017, the IFA wrote to Scottish Widows and requested information about the Plan. He included a client authority letter that had been signed by Miss N.
7. On 22 December 2017, Scottish Widows sent a letter to Miss N, which set out the details of the Plan. It said:-
 - The Plan was invested in a unitised with profits fund and was no longer receiving regular premiums.

- Miss N could take a maximum tax-free lump sum of 25% of the value of her funds.
 - The current transfer value amounted to £25,587.19. The transfer value had been provided for information purposes and was not guaranteed.
 - Miss N's nominated retirement date was June 2018, when she would attain age 60.
 - Flexi-access drawdown (**FAD**) was not an option under this contract and the funds would need to be transferred to a Scottish Widows Retirement Account Income product, or to another provider. The minimum amount that could be transferred, to access FAD, was £30,000.
 - Scottish Widows was unable to add a third party to receive information regarding the Plan as the Trust (**the Trust**) had been dissolved.
8. On 22 January 2018, the IFA wrote to Scottish Widows concerning the information he had requested on the Plan.
 9. On 23 January 2018, Scottish Widows sent an email to the IFA and said that the information had been sent to Miss N on 22 December 2017. As the Trust had been dissolved, it was unable to authorise a third party to act in connection with the Plan.
 10. The IFA replied the same day and highlighted that Miss N had authorised Scottish Widows to disclose information to him regarding the Plan.
 11. On 25 January 2018, Scottish Widows explained that it could only send information about the Plan directly to Miss N and suggested that the IFA contact Miss N.
 12. On 29 January 2018, the IFA informed Scottish Widows that he had now received the correspondence Scottish Widows had sent to Miss N. However, it did not contain all the information he had requested. He reiterated that Miss N had appointed him to deal with the Plan.
 13. On 6 February 2018, Scottish Widows wrote to the IFA. It said that it would resend the information directly to Miss N.
 14. The same day, Scottish Widows wrote to Miss N and explained that information about the Plan could not be sent to the IFA. It enclosed a copy of the information it had sent on 22 December 2017.
 15. On 19 February 2018, the IFA sent a letter to Scottish Widows and requested a transfer of the value of the Plan to Old Mutual. He enclosed a completed transfer request form, which had been signed by Miss N.
 16. In the period that followed, the IFA sent further correspondence to Scottish Widows and requested that it proceed with the transfer. He reiterated that he had been given authority to act in connection with the Plan.

17. On 14 March 2018, Scottish Widows sent its transfer application form to Miss N to complete.
18. On 27 March 2018, the IFA wrote to Scottish Widows. He said Miss N did not receive the information Scottish Widows sent in December 2017, and Scottish Widows was blocking the transfer to Old Mutual.
19. On 16 April 2018, Miss N was advised to contact Scottish Widows as she was approaching her nominated retirement date.
20. In June 2018, Old Mutual telephoned Scottish Widows regarding the transfer. Scottish Widows confirmed that it had sent the paperwork to Miss N.
21. On 20 August 2018, Scottish Widows sent a further copy of the transfer application form to Miss N. It explained that she could potentially take more than 25% of the value of her pension as a tax-free lump sum. Scottish Widows enclosed an EPP tax free cash lump sum form (**the TFC form**) for Miss N to complete.
22. On 29 August 2018, Scottish Widows sent Miss N a copy of the TFC form and asked her to complete it. Scottish Widows enclosed a transfer quotation and discharge and indemnity forms.
23. On 29 September 2018, Scottish Widows sent a letter to Miss N and asked her to complete the forms it had provided so that she could transfer the value of her pension savings in the Plan to another provider.
24. On 17 October 2018, Scottish Widows sent a further copy of the TFC form to Miss N and asked her to complete it.
25. On 18 October 2018, Scottish Widows sent a copy of the discharge and indemnity forms to Miss N and asked Miss N to complete the forms.
26. On 23 October 2018, Miss N signed the discharge and indemnity forms and sent them to Scottish Widows.
27. On 31 October 2018, Scottish Widows notified Miss N that the transfer had been completed and confirmed that £25,816.85 had been paid to Old Mutual.
28. On 29 November 2018, Miss N wrote to Scottish Widows. She explained that the funds had been returned by Old Mutual. She requested a statement of her retirement options, including the maximum tax-free lump sum available if the Plan was put into drawdown. She had already provided the TFC form but was unable to provide the salary information Scottish Widows had requested.
29. On 10 December 2018, Miss N followed up her request for information on her retirement options.
30. On 7 January 2019, Scottish Widows replied to Miss N and explained that she was only entitled to take 25% of her funds as a tax-free lump sum. So, there would be no restrictions on the retirement options available to her.

31. On 28 January 2019, Scottish Widows provided Miss N with the following information/forms:-
 - Plan information;
 - premium history;
 - a list of the investment funds available;
 - a nomination form; and
 - a member fund choice and charges sheet.
32. On 1 February 2019, Miss N highlighted that she did not request the information Scottish Widows had provided in its letter of 28 January 2019. She queried why Scottish Widows was insisting that the Plan was a company pension scheme and asked if it could be converted to a Scottish Widows personal pension, so that she could transfer the value of her pension savings to Old Mutual.
33. On 8 February 2019, Scottish Widows provided Miss N with details of the fund value and also a transfer value. Miss N was asked to confirm that she wanted the Plan to be converted to a personal pension.
34. On 20 February 2019, Miss N wrote to Scottish Widows and confirmed that she wanted to transfer the Plan to a personal pension plan. She requested information on how this could be completed.
35. On 22 February 2019, Scottish Widows reissued the TFC form to Miss N.
36. In April 2019, Miss N brought her complaint to The Pensions Ombudsman (**TPO**). TPO contacted Scottish Widows to ask what Miss N needed to do to transfer the Plan to a personal pension. Scottish Widows confirmed that Miss N should contact Scottish Widows and it would advise her on the necessary steps.
37. On 3 May 2019, Scottish Widows wrote to Miss N and asked that she provide the salary information requested on the TFC form. Scottish Widows explained that as Miss N was a controlling director of the company, it needed salary information, over a minimum of three consecutive years, to calculate her tax-free lump sum. If she did not have this information, she should telephone Her Majesty's Revenue and Customs.
38. On 22 May 2019, Miss N telephoned Scottish Widows. She confirmed that she wanted to transfer her pension savings in the Plan to a stakeholder arrangement. She explained that she did not want to provide any additional information on the TFC form; she was aware that this would limit the tax-free lump to 25% of the value of her Plan.
39. On 10 July 2019, Scottish Widows sent a secure email to Miss N and quoted a transfer value of £28,429.02. It also provided the transfer paperwork for completion.

40. On 19 July 2019, Miss N returned the completed transfer paperwork to Scottish Widows. She confirmed that she would like to transfer her pension savings in the Plan to a stakeholder pension arrangement.
41. On 9 August 2019, Scottish Widows sent a further email to Miss N and asked her to clarify the reasons for requesting a transfer to a stakeholder pension arrangement. Scottish Widows explained that Miss N could transfer her funds to a personal pension policy to flexibly access the money saved in the Plan.
42. On 14 August 2019, Scottish Widows asked Miss N to contact its New Business Team if she wished to set up a stakeholder pension plan. Miss N telephoned the New Business Team the same day.
43. On 15 August 2019, Scottish Widows sent a letter to Miss N and enclosed the product details for its stakeholder pension arrangement, including a key features document. Scottish Widows explained that if she wished to proceed with the transfer to a stakeholder pension arrangement, she should complete the application form and return it to Scottish Widows.
44. On 3 September 2019, Miss N sent an email to Scottish Widows. She said she was unhappy with how her pension was being managed and she was still not sure what the process was for setting up a stakeholder pension arrangement.
45. On 10 September 2019, Scottish Widows notified Miss N that the value of her pension savings had been disinvested and the sum of £27,235.32 had been transferred to her stakeholder pension arrangement that had been set up with Scottish Widows.
46. 11 September 2019, Scottish Widows sent a letter to Miss N and said:-
 - It agreed that it had not kept Miss N informed regarding the transfer of her pension saving in the Plan. In recognition of this, it enclosed a cheque for £75.
 - Scottish Widows set up the stakeholder pension during the telephone call on 14 August 2019. It acted on the instructions Miss N had provided at the time; it did not need her to complete an application form.
 - Following the complaint being referred to TPO, Scottish Widows provided additional information. Scottish Widows explained that its legal department had advised that the Plan was held under a Trust that had subsequently been dissolved. Consequently, Miss N could not appoint a third party to deal with the Plan on her behalf.

Adjudicator's Opinion

47. Miss N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Scottish Widows. The Adjudicator's findings are summarised below:-

- Scottish Widows provided clear information that it could only deal directly with Miss N and that any information regarding the Plan would need to be sent to her. So, Miss N was aware of the position at the time. The Adjudicator appreciated that Miss N would have found the situation frustrating. However, in the Adjudicator's opinion, it was reasonable for Scottish Widows to rely on advice from its legal department to inform its decision not to correspond with the IFA. In the Adjudicator's view, there was no maladministration on the part of Scottish Widows in not engaging with the IFA.
- The process of setting up the transfer to Old Mutual did not go smoothly and Miss N has said that she did not receive some of the information Scottish Widows sent in the post. The Adjudicator reviewed the documentation that was sent to Miss N, which was sent to the correct address. When Scottish Widows was made aware that Miss N had not received the correspondence, she was sent a further copy within a reasonable timeframe. Miss N did not return fully completed paperwork, so she was partially responsible for the delay in progressing the transfer.
- The Adjudicator noted that the transfer to Old Mutual ultimately failed and the funds were returned to Scottish Widows. In the Adjudicator's view, the fact that Old Mutual did not accept the funds was not due to any action by Scottish Widows. Consequently, Scottish Widows could not be held liable for any financial loss as a result.
- The Adjudicator reviewed the sequence of events following Miss N's request to set up a stakeholder pension arrangement. Scottish Widows repeatedly asked Miss N to complete the missing information on the TFC form but the process could have been better managed by Scottish Widows. In the Adjudicator's opinion, the service issues Miss N encountered did not warrant any further monetary award for non-financial injustice.

48. Miss N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. The IFA provided comments on Miss N's behalf which do not change the outcome. I agree with the Adjudicator's Opinion and have considered the additional points raised by Miss N:-

- Scottish Widows said that legally they could not provide the requested information to the IFA as her formally appointed Adviser. This was untrue and indeed their own rules and regulations, as laid down by the Pensions Regulator (TPR), say Scottish Widows must act in an open and cooperative manner in the best interests of the client.
- Not providing the information to the IFA, made it difficult, if not impossible, to advise Miss N, thereby increasing the likelihood that the investment would stay with Scottish Widows.

- The Financial Conduct Authority (**FCA**) and TPR had already been approached with this matter, and all parties should be aware that, the FCA and TPR were currently declining to comment further until the Pensions Ombudsman has completed its investigations. Unless the Pensions Ombudsman could acquire the written, irrefutable, and legal evidence that Scottish Widows must not correspond with the IFA as distinct from Scottish Widows choosing not to correspond with the IFA the matter would most certainly be referred back to the FCA and TPR again in due course.
- Scottish Widows has said that it provided the information to Miss N. In the IFA's opinion, Scottish Widows did not do so, and indeed it failed to do so on more than one occasion. Ignoring all the questions of lost or missing, or never sent post, Scottish Widows could have provided the information to both Miss N and the IFA, but it chose not to do so. When the information did arrive, via Miss N, it was inaccurate and lacking certain important factors meaning Scottish Widows were not acting in Miss N's best interests.

Ombudsman's decision

49. The IFA has said that the FCA and TPR have been approached regarding the substance of the complaint. If either of the regulators wish to follow up on the issues, then that is a matter for them. My role is to assess the circumstances of Miss N's complaint and decide if there has been maladministration by Scottish Widows.
50. Scottish Widows has said that it could not deal directly with the IFA as the Trust had been dissolved and a third party could not be added. It had relied on internal legal advice to guide this decision. The Adjudicator has said that it was reasonable for Scottish Widows to rely on its internal legal advice rather than making an assessment of the merits of that advice. I see no reason to take a different approach or to request the advice itself.
51. Scottish Widows provided the information directly to Miss N. Miss N was free to pass the information onto her IFA so that he could advise her regarding her options. There was no indication that Scottish Widows deliberately withheld any information in an attempt to retain Miss N's pension.
52. It was unfortunate that Miss N did not receive the information that was sent to her in the post. However, as it was correctly addressed by Scottish Widows, it is more likely than not it was received. There is no evidence to suggest that Scottish Widows did not provide the information and I do not find that there was any error on its part.
53. There were minor administration errors by Scottish Widows, and it did repeatedly request information from Miss N regarding the tax-free amount available. I cannot say that this error was anything to do with the lack of direct involvement of the IFA. Miss N was free to ask the IFA for advice at any time and to provide copies of information

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that had been sent to her by Scottish Widows. I agree with the Adjudicator that the errors were not sufficient to warrant an additional award for non-financial injustice.

54. I do not uphold Miss N's complaint.

Anthony Arter CBE

Deputy Pensions Ombudsman

30 June 2024