

## Ombudsman's Determination

Applicant	Ms N
Scheme	Scottish Widows Executive Pension Plan ( <b>the Plan</b> )
Respondent	"S" Ltd

### Complaint Summary

Ms N has complained that S Ltd unreasonably delayed the transfer of her pension benefits, which were held in an individual policy (**the Policy**) under the Plan. Ms N said the delay caused her an investment loss and prevented her from drawing from her benefits.

### Summary of the Ombudsman's Determination and reasons

The complaint is upheld because S Ltd has not presented any legal basis on which it was able to deny the transfer of Ms N's benefits, nor has it given a reasonable explanation for the delay.

### Detailed Determination

#### Material facts

1. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge that there were other exchanges of information between the parties.
2. The Plan is an executive pension plan. S Ltd is the trustee of the Plan and was the legal owner of the Policy, which was administered by Scottish Widows. Mr N is the director of S Ltd and is also Ms N's ex-husband.
3. On 21 February 2006, Mr N, on behalf of S Ltd, completed and signed a transfer information form to request a quotation for a transfer of benefits into the Plan (**the Transfer Information Form**). The Transfer Information Form set out that Ms N entered into pensionable service in June 2000. The value of the benefits to be transferred was recorded as £5,809.31.

4. On 24 March 2006, S Ltd wrote to Scottish Widows to confirm that the benefits held with Scottish Mutual, in respect of Ms N, were to be transferred into the Policy (**the March 2006 Letter**). The letter was signed by Mr N in his capacity as trustee of the ceding pension arrangement. The monies were “*to be applied to [Ms N’s] policy*”.
5. On 29 March 2006, Allied Luptons Ltd (**Allied Luptons**), an independent financial advisor, wrote to Scottish Widows. It enclosed the Transfer Information Form, which it said had been completed by Mr N, and a copy of the March 2006 Letter.
6. On 3 April 2006, Scottish Widows received the correspondence from Allied Luptons, dated 29 March 2006.
7. On 10 June 2022, Ms N completed a ‘leaving pensionable service form’ for the Policy. This indicated her wish to transfer the benefits in the Policy to a scheme administered by AJ Bell. The value of the benefits was given as £11,689.88.
8. On 1 November 2022, Scottish Widows issued a summary for the Policy. The total value of the benefits, as at 1 November 2022, was quoted as £11,166.56.
9. On 18 February 2023, Scottish Widows issued a summary for the Policy. This stated that total contributions paid to that point were £5,809.30 and this was a through single transfer payment, dated 3 April 2006. The total value of the benefits in the Policy, as at 18 February 2023, was quoted as £12,283.54.
10. On 2 August 2023, Ms N completed a new ‘leaving pensionable service form’ for the Policy. This indicated her wish to transfer the benefits to a scheme administered by Interactive Investor.
11. On 3 August 2023, the leaving pensionable service form was forwarded to S Ltd’s legal representative and a request was made that S Ltd give authority for the transfer to proceed. The value of the benefits in the Policy as at this date was £11,770.25.
12. On 13 November 2024 (**the Authorisation Date**), Mr N on behalf of S Ltd, submitted a signed transfer form for the Policy to Scottish Widows. This provided the necessary trustee authority for the transfer of Ms N’s benefits
13. On 27 February 2025, Scottish Widows transferred £13,851.62 to Ms N’s Interactive Investor SIPP.

### **Summary of Ms N’s position**

14. It was only through her recent investigation of a different pension that she became aware of the Policy. Prior to 2022, she did not know of its existence.
15. She is pursuing the complaint in relation to her alleged financial loss, caused by the delay to the transfer, and the distress and inconvenience she has suffered.

16. In the months following the transfer of her benefits to her Interactive Investor SIPP, and the drawing of her tax-free lump sum, she made a number of share and foreign currency trades. She has submitted details of these investments in support of her claim for redress for her alleged financial loss.

### **Summary of S Ltd's position**

17. Ms N was not employed by S Ltd when the Policy was set up in 2006. It appears that Ms N used its headed notepaper to request the transfer of benefits from Scottish Mutual. Mr N did not sign the paperwork.
18. The transfer was delayed, because it had to carry out legal due diligence, as well as try to establish the history of the Policy.
19. It has been offered the opportunity to set out the legal basis on which it took its original position that Ms N, or any other party, fraudulently established the Policy in Ms N's beneficial interest. No further explanation, or details of legal advice obtained, was submitted for consideration.

### **Preliminary Decision**

20. I issued a Preliminary Decision on 17 April 2025. Ms N has accepted the conclusions. S Ltd acknowledged receipt of the decision but has not provided a substantive response.

### **Conclusions**

21. I find that S Ltd's refusal to authorise the transfer of Ms N's benefits out of the Policy, until the Authorisation Date, amounts to maladministration. S Ltd alleged that fraudulent activity took place when the Policy was set up but has provided no evidence to support this allegation. S Ltd has since given authorisation for the transfer, without further explanation as to the change of position.
22. S Ltd had a duty as trustee to understand the correct legal position regarding the transfer of Ms N's benefits. However, a trustee should also be able to access accurate records of any pension arrangements for which it has responsibility. It does not appear that S Ltd maintained sufficient records for the Policy, which would have enabled it to respond appropriately to Ms N's transfer request. If, as alleged, the benefits previously held with Scottish Mutual, were transferred to the Policy without S Ltd's involvement, there is no evidence of any attempt being made by S Ltd, in the intervening years, to establish what happened.

23. Given the lack of evidence to support the allegation of fraud in the establishment of the Policy, I do not consider it to be a plausible explanation. The relevant correspondence in 2006 included a letter sent by a third party, Allied Luptons, which confirmed the actions requested by S Ltd. I find, on balance of probabilities, that these actions were likely instructed by Mr N in his capacity as director of S Ltd. So, there is no reasonable excuse for S Ltd acting to delay Ms N's transfer following the submission of her request, on 3 August 2023. S Ltd shall pay redress to Ms N for any financial injustice she has suffered as a consequence of its maladministration.
24. In general, where redress is recommended due to a delayed transfer of benefits, it may be possible to quantify the financial loss with reference to investments that were planned after completion of the transfer. In Ms N's case, I do not consider that this is possible. This is because of the more complex, and less predictable, nature of the investments that were undertaken by Ms N. In my view, it is unlikely that Ms N would have followed a similar schedule of investments, shortly after transferring, had the transfer not been unreasonably delayed. Furthermore, there has been no evidence submitted of specific investments that were intended to be made once the transfer was completed. As a result, I am unable to form a view as to what redress would be appropriate if the transfer happened at that time, and Ms N had invested the sum at the point.
25. As an alternative, Regulation 10 of The Occupational Pension Schemes (Transfer Values) Regulations 1996 (**the 1996 Regulations**) sets out how a scheme member may be compensated if the trustee does not carry out the required actions to administer a transfer of benefits within six months of the 'appropriate date'. I find that this would be a more reasonable approach in the circumstances of Ms N's case.
26. The definition of 'appropriate date' is given in Regulation 1 of the 1996 Regulations and refers to the Pension Schemes Act 1993 (**the 1993 Act**). Relevant extracts of the 1996 Regulations and the 1993 Act are shown in Appendix 1 and Appendix 2 respectively.
27. Ms N was entitled to money purchase benefits in the Policy. So, the appropriate date would be the date on which S Ltd was notified of Ms N's request to transfer. Notification was received by S Ltd's legal representative on 3 August 2023 (**the Appropriate Date**).
28. The transfer of Ms N's benefits was completed on 27 February 2025 (**the Transfer Date**), well in excess of six months after the Appropriate Date, as specified in the 1996 Regulations. With reference to Regulation 10 (2) of the 1996 Regulations, I find that S Ltd has offered no reasonable excuse for this delay.
29. Regulation 97 (1A) of the 1993 Act establishes that the cash equivalent transfer value should be calculated 'by reference to the date of the application [for the transfer]'. So, I find that the value on the Appropriate Date, £11,770.25 (**the CETV**), is the applicable transfer value, when considering whether Ms N should be paid redress for any financial loss.

30. Regulation 10 (2) of the 1996 Regulations sets out two calculation scenarios and directs that the greater of the two sums shall be paid (if necessary), in the event of a late transfer payment where there was no reasonable excuse.
31. With regard to sub paragraph (a) of Regulation 10 (2), the interest due on the CETV, from the Appropriate Date to the Transfer Date, would be £1,157.98. The interest rate used to calculate this figure was the Bank of England base rate plus 1%. This was applied daily on a simple, as opposed to compound, basis. The sum of the calculated interest amount plus the CETV is £12,928.23.
32. With regard to sub paragraph (b), I find that if the Appropriate Date had been when the transfer was completed, rather than 3 August 2023, the relevant date here would be 27 February 2025. The value of Ms N's benefits on this date was £13,851.62, and this was the amount transferred to her Interactive Investor SIPP. Given that it is higher than the figure calculated in paragraph 30, I find that Ms N has not suffered a financial loss according to the 1996 Regulations. So, she is not due any redress.
33. However, I find that Ms N has suffered distress and inconvenience because of S Ltd's maladministration. Where there has been distress and inconvenience, or non-financial injustice, I must decide whether an award is to be made.
34. The transfer of Ms N's benefits took almost 19 months to be completed, following the initial request submitted to S Ltd's legal representative, in August 2023. This is far longer than was acceptable given the circumstances of the case and was despite S Ltd being informed that it had presented no evidence of a right to prevent the transfer.
35. I find that this amounts to serious distress and inconvenience. S Ltd was afforded several opportunities to correct the situation but chose to delay. This has prevented Ms N from making significant decisions in relation to potential investments, and her retirement finances more generally.
36. I find that an award of £1,000 would be appropriate recognition of the serious distress and inconvenience suffered by Ms N.

### **Directions**

37. Within 28 days of the date of this Determination, S Ltd shall pay £1,000 to Ms N for the distress and inconvenience that she has suffered.

### **Dominic Harris**

Pensions Ombudsman  
26 May 2025

## **Appendix 1 – Extracts from The Occupational Pension Schemes (Transfer Values) Regulations 1996**

### **“1 Citation, commencement and interpretation...**

(2) In these Regulations, unless the context otherwise requires—

...“appropriate date” has the meaning given to that expression in section 97(3A) of the 1993 Act...

### **...7C Manner of calculation of initial cash equivalents for money purchase benefits (other than collective money purchase benefits) and cash balance benefits not calculated by reference to final salary**

(1) For cash balance benefits in respect of which the available sum is not calculated by reference to final salary and money purchase benefits other than collective money purchase benefits, the initial cash equivalent is to be calculated in accordance with this regulation.

(2) The initial cash equivalent is the realisable value at the date of calculation of any benefits to which the member is entitled.

(3) The trustees must calculate that realisable value—

(a) in accordance with the scheme rules; and

(b) in a manner which is—

(i) approved by the trustees; and

(ii) consistent with Chapter 1 of Part 4ZA of the 1993 Act.

(4) The realisable value must include—

(a) for money purchase benefits, any increases to the benefits resulting from a payment of interest made in accordance with the scheme rules; or

(b) for cash balance benefits—

(i) any interest (including notional interest) which, in accordance with the scheme rules, applies to the available sum in respect of which the benefits are calculated;

(ii) any guarantee which, in accordance with the scheme rules, applies to the available sum in respect of the benefits or to the contributions made by the member or by another person in respect of the member;

(iii) any options the member has which would increase the value of the member's benefits under the scheme (adjusted to reflect the proportion of members the trustees determine are likely to exercise those options); and

(iv) any discretionary benefits which the trustees determine should be taken into account, having regard to any established custom for awarding the benefits and any requirement for consent before they are awarded...

**...10 Increases of cash equivalents on late payment**

(1) Subject to paragraph (2), if the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail to do what is needed to carry out what the member requires within six months of the appropriate date the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.

(2) If the trustees of a scheme, having received an application under section 95 of the 1993 Act, fail without reasonable excuse to do what is needed to carry out what the member requires within six months of the appropriate date the member's cash equivalent, as calculated in accordance with regulations 7 to 9, shall be increased by—

(a) interest on that cash equivalent calculated on a daily basis over the period from the appropriate date to the date on which the trustees carry out what the member requires, at an annual rate of one per cent. above base rate; or, if it is greater,

(b) the amount, if any, by which that cash equivalent falls short of what it would have been if the appropriate date had been the date on which the trustees carry out what the member requires.”

## **Appendix 2 – Extracts from the Pension Schemes Act 1993**

### **“95 Ways of taking right to cash equivalent**

(1) A member of a pension scheme who has acquired a right to take a cash equivalent in accordance with this Chapter may only take it by making an application in writing to the trustees or managers of the scheme requiring them to use the cash equivalent in one of the ways specified below...

...(9) An application to the trustees or managers of the scheme under subsection (1) is to be taken to have been made if it is delivered to them personally, or sent by post in a registered letter or by the recorded delivery service...

### **...97 Calculation of cash equivalents**

(1) Cash equivalents are to be calculated and verified —

(a) in the prescribed manner, and

(b) where a designation has been made under section 97A or 97B, in accordance with regulations under section 97C.

(1A) Where a member applies under section 95 to take a cash equivalent that relates to money purchase benefits, the cash equivalent is to be calculated by reference to the date of the application.

(2) Regulations may provide—

(a) that in calculating cash equivalents that relate to money purchase benefits account shall be taken—

(i) of any surrender, commutation or forfeiture of the whole or part of a member's pension which occurs before the trustees or managers of the scheme of which he is a member do what is needed to comply with what he requires under section 95;

(ii) in a case where subsection (2) of section 96 applies, of the need to deduct an appropriate amount to provide for the liabilities mentioned in subsection (3) of that section;

(aa) for a cash equivalent that relates to any category of benefits to be reduced so as to take account of the extent (if any) to which an entitlement has arisen under the scheme to the present payment of the whole or any part of—

(i) any pension; or

(ii) any benefit in lieu of pension;

and



(b) that in prescribed circumstances a cash equivalent shall be increased or reduced

(3) Without prejudice to the generality of subsection (2), the circumstances that may be specified by virtue of paragraph (b) of that subsection include—

(b) failure by the trustees or managers of the scheme to do what is needed to carry out what a member of the scheme requires within 6 months of the appropriate date; and

(c) the state of the funding of the scheme.

(3ZA) Where, in the case of an application from a member under section 95 that relates to money purchase benefits that are collective money purchase benefits, regulations under section 99(2)(c) provide for a period longer than 6 months, subsection (3)(b) is to be read as if the reference to 6 months were a reference to that longer period.

(3A) For the purposes of subsection (3), the “appropriate date” —

(a) in relation to a cash equivalent that relates to benefits other than money purchase benefits, means the guarantee date for the purposes of the relevant statement of entitlement under section 93A, and

(b) in relation to a cash equivalent that relates to money purchase benefits, means the date on which the trustees or managers receive an application from the member under section 95.”