

## Ombudsman's Determination

Applicant	Mr E
Scheme	Scottish Widows Retirement Account ( <b>the Account</b> )
Respondent	Scottish Widows

## Outcome

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

## Complaint summary

2. Mr E has complained that Scottish Widows failed to provide him with sufficient information when the Account was established to enable him to place his pension in a suitably low risk fund. As a result, Mr E invested in an unsuitable fund and suffered a financial loss.

## Background information, including submissions from the parties

3. On 11 December 2018, on Mr E's instigation, Scottish Widows rang him to discuss his options in respect of taking benefits from a pension policy. This is described as a Retirement Journey call, in which the options available to a Scottish Widows policy holder are set out, but no advice is provided. Based on the call, Mr E decided to move his pension into the Account, which would allow him to access his pension benefits flexibly.
4. During the call Mr E expressed his uncertainty as to which investment portfolio to select. Mr E was told that initially there were only five funds available to the Account, but once established, more options would be available. The wider options would be detailed in the welcome pack which would be issued on establishment of the Account. Of the five investment portfolios available, Mr E was deciding between Portfolio C or Portfolio 5.
5. Portfolio 5 is described as a cash/near cash fund and Portfolio C is described as being comprised of 30% shares and 70% bonds.
6. The Scottish Widows call handler invited Mr E to consider his options and call him back. In the second call a short time later Mr E confirmed he had decided on Portfolio C.

7. On 18 December 2018, Mr E spoke with Scottish Widows again to enquire about how the Account worked and asked whether there were any guarantees or if there was a cut off on the unit price. Scottish Widows confirmed that Portfolio C was the second lowest risk investment available and outlined alternatives.
8. In the course of the call, Scottish Widows talked Mr E through the process of accessing the online facility which would provide more information about the investment choices available to him.
9. Mr E has said that following this call he tracked Portfolio C's performance and noted a downturn, on the basis of which he decided to disinvest.
10. On 22 December 2018, Mr E spoke with Scottish Widows again. During the call Mr E explained his concerns about volatility and Scottish Widows made him aware of the Control Account, a cash account within the Account. On learning of this, Mr E requested his investments be sold and placed in the Control Account.
11. At the point the investments were sold, Mr E had suffered a loss of value of approximately £1,500.
12. Mr E complained about the information provided by Scottish Widows and on 21 January 2020 it provided its response. It did not uphold the complaint and made the following points:-
  - For non-advised clients such as Mr E, it had taken the decision to only offer five funds at the point a Retirement Account was set up. The Control Account was not an option initially available to Mr E.
  - Online fund performance information was available once the Account was established and a PIN issued to Mr E. This was confirmed in the first two calls. However, the information online would only be based on the value of the fund at the close of business the previous day. Any valuation based on this information would not have been guaranteed. At any point, Mr E could have called and requested a policy value.
13. A further response was provided by Scottish Widows on 25 March 2019, after Mr E raised additional comments. It added: -
  - Scottish Widows does not offer the facility for live fund prices.
  - The Control Account is intended for short term use, primarily intended to allow cash payments to and from the Account.
14. Mr E's position is, in summary: -
  - He had made clear in the course of the telephone calls with Scottish Widows that he was a very risk averse individual and therefore a feature of the Account that was relevant to him was the Control Account. He should have been informed of it, and had he been he would have selected it and avoided the subsequent losses that he suffered.

- In the Retirement Journey call he ought to have been speaking with a retirement specialist, then the Control Account would have been discussed and he would have opted for it. It was irresponsible not to have a knowledgeable specialist speak with him during this discussion.
- He selected Portfolio C over Portfolio 5, because, although Portfolio 5 was his first choice, on reviewing the information, he concluded Portfolio 5 was not appropriate. It was described as “for investors over the short term and those planning to keep their pension pot invested for only a couple of years”, whereas he intended to keep the pension for 10-15 years.
- Portfolio C was the lowest risk appropriate option as Portfolio 5’s charges and inflation would have caused an erosion of his pension. The Control Account would not have had such high charges and would have better retained the pension’s value. He had no capacity for loss and therefore the Control Account was ideal for him.
- He had always invested in the lowest risk option and Scottish Widows had a duty to its loyal customers to acknowledge this. To do so would not have to extend to financial advice. The involvement of a financial adviser would not have altered his attitude to risk.
- Scottish Widows should also have confirmed the series of portfolio he was selecting as this would have given him a better insight into historical performance. By not providing this information Scottish Widows was acting irresponsibly.
- Although fund value information is on the basis of the value at close the previous day, it gives a good indication of the fund performance and would have influenced his decision making if he had been referred to it.
- He cannot have requested information about the Control Account if he was not aware of it. The individual in the Retirement Journey conversation should have been expected to know of the Control Account and to have made him aware of it.
- Even if it was not disclosed in the first call, it ought to have been disclosed in the second call on 18 December 2018.
- The losses suffered caused significant stress and only through moving to the Control Account was this relieved.

## **Adjudicator’s Opinion**

15. Mr E’s complaint was considered by one of our Adjudicators who concluded that no further action was required by. The Adjudicator’s findings are summarised below:-

- Scottish Widows’ decision to restrict individuals in Mr E’s position to the five investment portfolios was a legitimate commercial decision. Although Mr E would like to have been informed of the Control Account, the absence of information about this Account feature was reasonable given it was not available to Mr E at the time.

- Having been provided with the options that were available to him, Mr E selected, on a non-advised basis, the second lowest risk fund, Portfolio C. Had Mr E been unsure of this decision, he could have requested more information, or sought financial advice.
  - When Mr E spoke to Scottish Widows, on 18 December 2018, it could have brought the Control Account to his attention, but in the absence of a specific enquiry about a cash only account, there was no requirement for Scottish Widows to highlight it to him.
  - Additionally, Mr E was aware of a lower risk alternative, Portfolio 5, but he did not choose it. This suggests he may not have selected the Control Account even if it was discussed. Mr E has explained that the charges associated with Portfolio 5 made it unappealing, but nevertheless, if risk mitigation was what Mr E preferred, he ought reasonably to have selected Portfolio 5 rather than Portfolio C, regardless of the accompanying higher charges. This balance between charges and higher risk was for Mr E to decide as a non-advised client, and he selected higher risk.
  - Mr E may well have selected the Control Account at an earlier opportunity, if it had been brought to his attention, but in the absence of incorrect information or the omission of required information, there is no reason to uphold the complaint.
  - The specific series of Portfolio C, that Mr E was invested in, does not appear to be a determining factor in the complaint given that the choice was between Portfolio 5 and Portfolio C, and the differentiating features remained constant regardless of the series of fund. This information seems unlikely to have been a reason for Mr E to select one fund over the other.
  - As a non-advised client, Mr E's rights to complain of the extent of the information provided by Scottish Widows, is more limited, and the objective of the retirement journey conversation appears to have been misunderstood by Mr E. This was not intended to detail all of the features of the options available to him, but instead would provide an overview from which he could make a decision. This is a reasonable approach in the circumstances, and Mr E was informed of the options that were available to him when he established the Account; the five portfolios.
  - While the situation will have caused Mr E stress and concern, volatility is an inherent risk when investing, particularly over such a short investment timeframe as in this case. Mr E selected Portfolio C over a lower risk alternative.
16. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided further comments, which the has Adjudicator addressed. Mr E's further submissions do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mr E for completeness.

## **Ombudsman's decision**

17. I do not doubt that Mr E is upset at the situation, and I have no doubt about his low attitude to risk and his preference for the Control Account, had it been disclosed to him earlier. However, the test in determining whether the complaint should be upheld is whether Scottish Widows provided Mr E with incorrect information, or omitted information that it was required to provide.
18. There are two occasions at which this information could have been provided to make a material difference to the outcome, the calls on 11 and 18 December 2018.
19. In respect of the first call, in the process of establishing the Account, there was no obligation for information about the Control Account to be provided because it was not an option available to Mr E. Further, it would not be reasonable to put such an obligation on Scottish Widows, as there were in excess of 1000 other funds accessible within the Account that were unavailable at inception. It would not be possible for all aspects of the Account to be disclosed in this conversation, hence the restriction of investment to five portfolios for non-advised clients.
20. At the point of the second call, on 18 December 2018, there is a stronger argument that Scottish Widows could have brought the Control Account to Mr E's attention given the direction of the conversation. However, Mr E made no specific query about a cash only fund being available and there was no obligation for Scottish Widows to ensure he was in the most suitable fund, as it was not advising him.
21. In any event, Mr E was reminded that a lower risk portfolio was available to him, but he remained in Portfolio C. I appreciate Mr E's comments about charges being higher in Portfolio 5 than in the Control Account, but given his preference for low volatility and risk, I would nevertheless have expected him to have opted for Portfolio 5, to mitigate the risk of volatility despite the fact that charges were higher. As he remained in Portfolio C, despite the lower risk alternative, it is reasonable to take the view that he was prepared to accept the risk and that it was his decision.
22. I do not uphold Mr E's complaint.

**Anthony Arter**

Pensions Ombudsman  
25 March 2020