

Ombudsman's Determination

Applicant	Mr R
Scheme	Scottish Widows Personal Pension Scheme (the Scheme)
Respondent	Scottish Widows

Outcome

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

Complaint Summary

2. Mr R's complaint concerns the guaranteed annuity rate (**GAR**) that was applicable to his pension. He asserts that he was unaware that there was a deadline to claim the GAR so he would like it reinstated.

Background information, including submissions from the parties

3. Mr R is a member of the Scheme and his normal retirement date (**NRD**) was 24 November 2019. A GAR was attached to Mr R's benefits in the Scheme (**his benefits**). However, for the GAR to have been applied Mr R needed to claim his benefits on his NRD.
4. On 28 May 2019, Scottish Widows wrote to Mr R (**the May Letter**). This letter was sent to inform Mr R of his retirement options so he could make the most of his retirement. Under the heading: 'THINGS YOU NEED TO THINK ABOUT' the letter stated:

"Your policy has an extremely valuable guarantee. If you use it, you could significantly increase the amount of income you receive from your pension pot, and in some circumstances, almost double it. The enclosed leaflet, 'Your Guide to Guaranteed Annuity Rates', explains how the guarantee can affect your retirement benefits. Please read this leaflet carefully before you decide what to do, as the decisions you make now could affect the level of income you receive...".

5. On 9 October 2019 (**the October Letter**), Scottish Widows sent Mr R a further letter. This letter was broadly the same as the May Letter and reiterated that Mr R should read the leaflet entitled 'Your Guide to Guaranteed Annuity Rates' (**the Guide**)¹.

6. On 6 November 2019, Scottish Widows wrote to Mr R (**the November Letter**). This letter reiterated that Mr R had an extremely valuable GAR and said:

"It's important that you tell us before 24 November 2019 if you wish to take the guaranteed annuity rate as you can only use this at your chosen retirement date.

If we don't receive your instruction by this date, this valuable benefit may be lost..."

7. On 24 November 2019, Mr R attained his NRD.

8. On 25 February 2020 (**the February Letter**), Scottish Widows wrote to Mr R. It informed him that his policy was due to mature on 24 November 2019 and that its record showed that he had not claimed his benefits from the policy at the maturity date. It detailed the options Mr R had at the maturity of his policy, which were:

- take his benefits from Scottish Widows;
- transfer his pension to another provider; or
- postpone taking his benefits to a preferred Deferred Pension Date.

Scottish Widows asked Mr R to inform it of which option he wished to take and informed him that the last monthly premium was paid on 28 September 2019. So, if he wished to defer his pension to a later date, he should inform Scottish Widows if he wished to continue paying the current contributions.

9. Following this letter Mr R contacted Scottish Widows by telephone on 13 March 2020. During this telephone call:-

Mr R:

- confirmed that he wanted his contributions re-instated;
- said that he probably did not read anything that Scottish Widows had sent him;
and
- confirmed that he did not know what the GAR was.

The Scottish Widows' call handler explained:

- the contents of the February 2020 Letter;

¹ Relevant extracts from the Guide are provided in the Appendix.

- that contributions had ceased because Mr R's policy had matured. If Mr R wished to continue making contributions the GAR would be lost;
- for Mr R to get the GAR he had to claim his benefits on his NRD. The GAR would be lost if the benefits were transferred;
- he did know whether the GAR would still be available to Mr R. Scottish Widows allowed a 90 day extension period, after the NRD, for the GAR to still be valid, but because the policy had expired in November, the 90 day extension period had now passed;

and

- there should be some leeway if Mr R was not aware of the GAR.

10. Following this, there were further exchanges between Mr R and Scottish Widows concerning, Mr R's understanding of the type of benefits he had, and whether Scottish Widows would reinstate the GAR. Scottish Widows did not agree to reinstate the GAR, and this resulted in Mr R making a complaint to Scottish Widows.

11. On 22 April 2020, Scottish Widows replied to Mr R's complaint. In summary Scottish Widows said:-

- Prior to the policy's maturity date, it had written to Mr R on three separate occasions to advise him that the maturity date was approaching, and that it would require a decision from him, or the GAR feature would no longer be available.
- When the request for a concession was made, the May, October and November Letters were taken into consideration.
- It determined that it had provided Mr R with sufficient opportunity to contact it about the GAR and that the correspondence and associated guides had provided him with adequate warnings.
- So, it had decided not to grant an extension to allow Mr R to claim the GAR.
- It was unable to uphold his complaint because no errors had been made by Scottish Widows and it had followed its standard processes.

Mr R's position

12. Mr R says:-

- He was unaware of the maturity date of his benefits and thought that he could continue contributing to the Scheme until his official retirement age.
- He had paid into the Scheme for 30 years without fail. In late February 2020, Scottish Widows sent him a letter informing him of the maturity date which he thought would continue.

- At that point he discovered Scottish Widows had stopped taking his monthly payments so he contacted it to see why it had done so, and what he could do to continue paying the contributions.
- He contacted Scottish Widows as soon as possible, following receipt of the February Letter. It was then that he learnt he had lost his GAR because he did not contact Scottish Widows within 90 days following his NRD.
- The February Letter is the only letter he could recall receiving on this important matter. He was abroad on holiday in late February/March 2020, so he would not have been able to respond to the February Letter.
- He wondered if the Pensions Ombudsman (**the Ombudsman**) could reverse Scottish Widows' decision not to award him the GAR.
- He feels "very bitter" that after 30 years of contributions, Scottish Widows is able to withdraw the GAR, because of a 90-day clause.
- He understands his benefits had a favourable annuity compared to today's rates. On reflection, for at least 20 years interest rates were "ski-high" for his 30 years of contributions. So, the GAR did not look that great throughout from an investment perspective in the past. Only in recent times, with lowering interest rates, has the GAR looked favourable to investors.
- He questioned Scottish Widows' level of determination to contact him prior to the expiration of the GAR.
- Since he has referred his complaint to The Pensions Ombudsman (**TPO**), he has had no correspondence from Scottish Widows. He thinks Scottish Widows' silence "speaks a thousand words". It has hung on to his fund pending the Ombudsman's Determination for 18 months.

Adjudicator's Opinion

13. Mr R'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.
14. There was no dispute that there was a GAR attached to Mr R's benefits. Prior to Mr R's NRD it would have been his legal right to receive the GAR had he claimed his benefits at his NRD. However, this right was extinguished when Mr R did not claim his benefits at his NRD. Subsequently, the GAR became a discretionary benefit that Scottish Widows could award if it decided to make a concession.
15. Prior to his NRD, Scottish Widows sent Mr R three letters. The May and October Letters informed Mr R that he had an "extremely valuable guarantee." The November Letter also informed Mr R that he had a valuable GAR. The Adjudicator appreciated that these letters did not explicitly inform Mr R that he would lose the GAR if he did

not claim his benefits at his NRD. However, the May and October Letters did refer Mr R to the Guide, and the November Letter informed him that if Scottish Widows did not receive his instruction by his NRD, he may lose the GAR.

16. The Guide informed Mr R that in order for him to get the GAR he needed to claim his benefits from Scottish Widows on his NRD, in a form specified in the policy provisions. On page three it said:

“If you take your pension in any other way, at any other date or from another provider, you will lose the benefit of your guaranteed annuity rate.”
17. The Adjudicator was of the view that the Guide clearly informed Mr R of the consequences, in relation to the GAR, if he did not claim his benefits on his NRD. Further, Mr R could have contacted Scottish Widows to find out about his valuable guarantee prior to his NRD if he was unsure of what the guarantee was.
18. It was the Adjudicator’s view that prior to Mr R’s NRD, Scottish Widows took reasonable steps to inform him of the GAR and that it would be lost if he did not claim his benefits on his NRD.
19. The Adjudicator noted Mr R’s comments that he had lost the GAR because he did not contact Scottish Widows within the 90 days of his NRD. She also noted his comments that he could not recall receiving the May, October and November Letters. However, these letters were sent to Mr R’s correct home address. Further, during the telephone conversation between Scottish Widows and Mr R on 13 March 2020, Mr R said that he probably did not read anything that Scottish Widows had sent him.
20. In the Adjudicator’s opinion, on the balance of probabilities, Mr R did receive the letters and he had sufficient time to contact Scottish Widows to arrange to claim his benefits on his NRD in order to benefit from the GAR. Scottish Widows could not be held responsible for Mr R not reading the correspondence it had sent him.
21. Scottish Widows decided not to award Mr R the GAR for reasons detailed in paragraph 11 above. The Adjudicator understood Mr R’s disappointment with Scottish Widows’ decision, but it was her view that Scottish Widows’ decision did not amount to maladministration. This was because Scottish Widows has discretion in relation to reinstating a GAR when a policyholder does not claim their benefits on their NRD.
22. The Adjudicator also believed that Mr R had not lost the GAR because of any maladministration by Scottish Widows. Mr R may wish to contact Scottish Widows to discuss his options in relation to the payment of his benefits.
23. Mr R did not accept the Adjudicator’s Opinion. In response, he said in summary:-
 - He did not receive all the communications that Scottish Widows says it had sent him. He could only conclude that those communications were lost in the post,

especially the February letter. He disputes that lost post always gets returned to the sender, as “many households bin mail” that is wrongly delivered.

- Surely, such important documents or communications should be sent in a ‘signed for’ format. The “burden of proof” should be with Scottish Widows to demonstrate letters were received as they were so important.
- Other important factors which must be taken into account, which he believed the Adjudicator had omitted to take into account, was his personal circumstance at a crucial time. He had two big holidays: two weeks in South Africa during December 2019; and a Caribbean cruise in late February/March 2020. Unbeknown to him, these holidays were taken at a time that it was crucial for him to give Scottish Widows a response.
- This is a “legacy” policy with a GAR which “30 years ago would not have looked that favourable, 30 years of payments deserves more than 90 days to claim the GAR”. It seems a “tad unfair” for Scottish Widows to withdraw the GAR after 30 years of contributions.
- This has now been ongoing for around two and a half years and he estimates the cost he has incurred to be £20,000. He has also not been able to access his fund due his complaint being with TPO.
- In essence, this process has had a huge effect on his mental health and wellbeing, anxiety and stress levels. It has also hugely impacted his financial circumstances, as he moves into retirement, all of which will make no difference to Scottish Widows’ business.

24. Scottish Widows accepted the Adjudicator’s Opinion, but made the following comments:-

- Mr R stated there was some information he had not received and said he can only assume it was lost in the post.
- It was sorry to hear this and generally if post is not delivered it is returned by Royal Mail. It did not receive any returned mail. Mr R previously said he probably did not read anything that Scottish Widows had sent him.
- Mr R also said that he had other important factors that might have played a role in him not claiming his benefits in time to receive the GAR, such as two big holidays. It was confused as to the relevance of this comment.

25. As Mr R did not accept the Adjudicator’s Opinion, the complaint was passed to me to consider. Mr R provided further comments which do not change the outcome. I agree with the Adjudicator’s Opinion and note the additional points raised by Mr R.

Ombudsman's decision

26. Mr R's complaint concerns Scottish Widows' decision not to reinstate the GAR on his benefits, after his NRD.
27. The decision of whether or not to award the GAR to Mr R after his NRD was at Scottish Widows' discretion. I find that, prior to Mr R's NRD Scottish Widows took reasonable steps to inform Mr R of the GAR and the consequences in relation to the GAR if he did not claim his benefits on his NRD.
28. I note Mr R's comments that he did not receive all correspondence from Scottish Widows. I find that, on the balance of probabilities, Scottish Widows did send the May, October and November letters to Mr R. Scottish Widows cannot be held responsible if these letters were lost in the post, not received, or if Mr R did not pay them due heed.
29. Regarding Mr R's comments about his personal circumstances concerning the holidays he had in December 2019 and February/March 2020, I do not find the holidays are relevant to his case. This is because the May, October and November letters, and Mr N's NRD predated his holidays. So, I do not find that the Mr R's holidays prevented him from claiming his benefits and utilising the GAR on his NRD.
30. Scottish Widows did not agree to make a concession to pay Mr R the GAR after his NRD for the reasons given in paragraph 11 above. I do not find there was any maladministration by Scottish Widows in relation to this decision. I also do not find that Mr R's current circumstances are due to any action taken by Scottish Widows.
31. I do not uphold this complaint.

Anthony Arter

Pensions Ombudsman
9 June 2022

Appendix

Relevant sections from the leaflet entitled: 'Your Guide to Guaranteed Annuity Rates'

"Q. HOW DO I MAKE SURE I GET MY GUARANTEED ANNUITY RATE?

A. To make sure you get your guaranteed annuity rate, you'll need to follow the conditions which were detailed in your policy provisions when you first took out your plan. So, to get your guaranteed annuity rate you'll need to take your pension:

- with Scottish Widows
- at your selected pension date (normally the date you choose when you start your plan*)
- in a form specified in your policy provisions – by this we mean you need to make sure the pension
 - is payable to you or continues to be paid, perhaps at a reduced level, to your spouse or partner after you die
 - is payable yearly, half-yearly, quarterly or monthly in arrears
 - remains at the same level throughout, or increases each year at a fixed rate – for example 3%
 - is payable until you die, or is guaranteed to be paid for a whole number of years but no longer than 10 years (as chosen by you) even if you die earlier.

If you take your pension in any other way, at any other date or from another provider, you will lose the benefit of your guaranteed annuity rate.

For more information about your choices, your selected pension date or to find out more about your guaranteed annuity rate please call us on **0345 7166 777**.

We can't give you advice, but we can give you factual information about your plan.

*It will be a different date if either of the following applies:

- if we agreed to change your selected pension date (subject to the point below) before 1 February 2002, and we endorsed your policy to reflect this, that new date is your selected pension date

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- pension rules changed on 5 April 2010. So if, at the start of your plan, you chose a selected pension date before your 55th birthday, your selected pension date is now your 55th birthday (unless a different date has already been agreed).”