

Ombudsman's Determination

Applicant	Mr Y
Scheme	Scottish Widows Personal Pension Plan (the Plan)
Respondent	Scottish Widows plc (Scottish Widows)

Outcome

1. I do not uphold Mr Y's complaint and no further action is required by Scottish Widows.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr Y has complained that Scottish Widows did not follow his instruction and contract him out of the State Second Pension (**S2P**)

Background information, including submissions from the parties

4. S2P is an earnings related scheme which is paid on top of the basic state pension. Before 2012 employees, who were members of an occupational scheme, or a personal/stakeholder pension, were allowed to contract out of S2P. In exchange for lower National Insurance contributions, they gave up the additional state pension.
5. On 16 May 2014, Scottish Widows wrote to Mr Y and said that although he had requested to be contracted out of S2P in 2008, this instruction had not been followed. This meant his top up benefits would be paid as S2P when he reached state pension age, as opposed to enhancing the Plan. It further explained that in April 2012, the right to contract out had been abolished and Scottish Widows were unable to retrospectively contract him out of S2P. Scottish Widows asked Mr Y to provide some information so it could calculate whether he had suffered a loss due to their error.
6. Between June and August 2014, Scottish Widows collected information from Mr Y.
7. On 10 September 2014, Scottish Widows sent Mr Y a letter which confirmed that it had considered future projections and had made a calculation based on the information he had provided. Scottish Widows concluded that Mr Y had not suffered a loss because when he reaches state pension age he will receive the top up benefits under S2P, Scottish Widows recognised that Mr Y would lose the option of taking

25% of the additional pension as tax free cash. Therefore, it said it would provide a payment of £438.45, plus 8% interest, £444.25, to compensate for this loss.

8. Mr Y said he was dissatisfied with the offer and raised a formal complaint. Scottish Widows wrote to him on 20 November 2014, and said it believed its calculations were fair and reasonable, but offered Mr Y £500 because it realised he had suffered a loss of flexibility in what he could do with the money, for example he would need to wait until he reached state pension age before he could start receiving the S2P benefits.
9. During February and March 2015, Mr Y collated information from Her Majesty's Revenue and Customs (**HMRC**) so he could pursue his complaint further with Scottish Widows. On 22 March 2015, Mr Y emailed Scottish Widows and said since moving to the United Kingdom, he had always contracted-out of the S2P because his intention was to return to Ireland when he retired. He said, because of Scottish Widows' error, his Plan value was £6,026.91 lower than it should be, which reduced his opportunity to invest as he wished. Mr Y said he expected Scottish Widows to put him back into the position he would have been in had the error not occurred by paying the monies lost into the Plan.
10. On 9 April 2015, Scottish Widows replied to Mr Y's complaint. Its actuaries considered the further information that Mr Y provided from HMRC, but still did not consider that he had suffered a loss because even if he moved to Ireland or any other European Union (**EU**) state he would still receive the S2P benefits. Scottish Widows explained that if it were to put additional benefits into the Plan he would also receive S2P, so would essentially get the benefits twice which was unreasonable. It stood by its award of £444.25 plus a further £500.
11. Mr Y took his complaint to the Pensions Advisory Service (**TPAS**), who contacted Scottish Widows on his behalf. On 12 February 2016, Scottish Widows responded to TPAS and explained that it had carried out a comparison between the current value of notional DSS rebates, specific to the years Mr Y could have been contracted out, and the current value of the contracted in S2P membership accumulated over the same defined timeframe. Scottish Widows concluded that Mr Y had not suffered a loss, it said it would be willing to offer a further £500 for the distress and inconvenience he had suffered.
12. Mr Y remained dissatisfied and brought his complaint to The Pensions Ombudsman.

Adjudicator's Opinion

13. Mr Y'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 briefly below:-
 - Scottish Widows agreed it made an error in not contracting Mr Y out of the S2P, so there was no dispute that a problem had occurred. The matter in dispute is the financial loss Mr Y might have suffered due to the error.

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- Scottish Widows produced a substantive report on 12 February 2016 which set out the comparison between contracting in and contracting out. There is no reason to consider that the information provided by Scottish Widows' actuaries is incorrect and Mr Y has not provided any evidence or argument to challenge the report other than to say that the Plan value is lower than he considers it should be.
 - The outcome Mr Y requested was for the loss that he had calculated to be paid into the Plan with Scottish Widows. But, if this were to happen he would essentially be receiving the benefits twice as he will also be receiving the S2P. It is not a reasonable outcome for Mr Y to receive this amount twice.
 - Scottish Widows acknowledged that Mr Y had suffered a loss in that he was not able to take 25% of the benefits as tax-free cash. It calculated that resultant income tax payable would be 438.45. With interest added at 8%, the total sum Scottish Widows offered as compensation was £444.25, an approach taken in a previous determination (ref: **PO-221**).
 - An offer of £500 for loss of flexibility and £500 for distress and inconvenience was offered by Scottish Widows. The Adjudicator considered this to be a reasonable award.
 - Finally, should Mr Y make a decision to move back to Ireland, when he reaches retirement age, Scottish Widows confirmed that the S2P would be paid in any EU state so it is not an issue.
14. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr Y made the following comments:-
- At age 62, he will have built up the 30 years of National Insurance contributions in order to receive the full state pension. Therefore, any extra qualifying years will not count, and he has lost out in credits being made into the Plan;
 - The state pension age has risen to age 68, and is likely to continue to rise which is why he opted to contract out so he could control when he took his benefits;
 - The report that Scottish Widows issued on 12 February 2016, from its actuarial department, is not clear or in plain English. Scottish Widows should provide something he understands. Mr Y considers that it does not show whether he has suffered a loss; and
 - As a result of Scottish Widows maladministration he is not in the position he wanted to be in.
15. I agree with the Adjudicator's Opinion, and I will therefore only respond to the key points made by Mr Y for completeness.

Ombudsman's decision

16. Mr Y's complaint is that Scottish Widows did not follow his instructions and contract him out of S2P.
17. There is no disputed that Mr Y's instructions to contract him out of S2P were not followed by Scottish Widows, and I agree this amounts to maladministration. However, it is not possible to put Mr Y back into the position he would have been in. This is because contracting out ceased in April 2012, and the contracting out payments have already been made to HMRC; this is irreversible.
18. Therefore, it is not possible for Mr Y to be put into the position he wishes to be in, but, what I can consider is whether Mr Y has been suitably compensated for Scottish Widows' error.
19. Mr Y says he will have paid the maximum 30 years of National Insurance contributions required to receive a full state pension by the age of 62. He believes this means he will not benefit from any additional qualifying years and so has suffered a loss. To receive the full basic state pension you need a total of 30 qualifying years of National Insurance contributions or credits. The S2P is in addition to the basic state pension and although linked to the payment of national insurance contributions it is not affected by the number of qualifying years.
20. Mr Y contends that because the state pension age is continually increasing he does not have any control over when he will receive the S2P. Whilst I sympathise with Mr Y's frustration that he would have had access to the contracting out benefits as he wished I believe the £500 offered from Scottish Widows for loss of flexibility is a reasonable award in the circumstances.
21. Mr Y has complained that the actuarial report Scottish Widows provided is confusing and not in plain English. This is a complex matter and I can see that the actuarial report might be confusing to someone unfamiliar with pensions and not from a pensions' related background. However, I note that Scottish Widows, in its letter of 12 February 2016, summarised the outcome of the report in a less complex way. I do not consider that Scottish Widows could do more although Mr Y could have referred back to Scottish Widows if there were areas of which he was unsure. Alternatively, he could have sought independent advice for a further explanation on the report.
22. Although Mr Y's instructions were not followed I find that Scottish Widows' offer of £444.25 is adequate in respect of the tax loss on the 25% cash sum.
23. Furthermore Scottish Widows has offered £500 for loss of flexibility for being unable to access the S2P benefits before state retirement age, and a further £500 for distress and inconvenience. I do not consider these awards need to be increased.

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24. Therefore, I do not uphold Mr Y's complaint.

Anthony Arter

Pensions Ombudsman

13 September 2017