Ombudsman’s Determination

Applicant	Mr N
Scheme	Scottish Widows Group Personal Pension (the **Policy**)
Respondent	Scottish Widows

Outcome

1. I do not uphold Mr N’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 N's complaint about Scottish Widows is that he received annual benefit statements for a second pension policy, which gave him the reasonable expectation that he had two policies with Scottish Widows. Mr N says he made retirement plans, purchased a caravan and renovated his kitchen in anticipation of receiving a lump sum of 25% from each policy.

Background information, including submissions from the parties

4. Mr N was employed by Combined Composite Technologies Limited (the **Company**).

5. Mr N says the Company was part of the ‘Borden group of companies’, and that ownership of the Company was transferred to Hexion (UK) (**Hexion**) Limited. Mr N says this was followed by a further change in ownership before the Company transferred back to Hexion.

6. On 31 May 2006, Mr N applied for membership of the Hexion's group personal pension plan with Scottish Widows. Mr N's application states that his employer will be contributing 6% and he will contribute 7% of his salary (£43,050).

7. Mr N says he joined the 'Hexion UK Ltd scheme', following the transfer of the Company’s ownership to Hexion.

8. Scottish Widows says on receipt of his application, it set up a policy for Mr N under the 'Hexion UK Limited' scheme - plan number 3196445 (**Policy 2**).

9. Scottish Widows says it has been unable to reproduce the 'new business documentation' that would have been issued for Policy 2.

10. On 5 April 2007, Scottish Widows issued an annual pension statement in respect of a plan numbered 3221386 (**Policy 1**). The statement showed a scheme name of ‘Combined Composite Technologies Ltd (Borden)’, and a total fund value of £4,375 as at 31 March 2007. The total contributions shown on the statement were £4,593.

11. On 2 May 2007, Scottish Widows issued the first annual pension statement in respect of Policy 2. The statement showed a total fund value of £5,376 as at 30 April 2007, and contributions amounting to £5,039.

12. In July 2007 Scottish Widows says it became aware it had set up Policy 2 in the wrong scheme. So Scottish Widows cancelled Policy 2, replaced it with Policy 1 the same month - effective from 1 June 2006, under the scheme name of 'Combined Composite Technologies Limited'. Scottish Widows says Policy 1 is Mr N’s correct policy, and pension contributions have been applied to that policy since 1 June 2006. Scottish Widows says it assumes it wrote to Mr N and the scheme administrators at the time, but it cannot provide any evidence to support this.

13. Scottish Widows says the intention was to cancel Policy 2 effective from the start date, but because of an administration error, the cancellation was not carried out correctly. Scottish Widows says no premiums were actually paid under Policy 2, as it was replaced by Policy 1. But as units under that scheme are purchased on the due date, awaiting payment of contributions from the employer, Scottish Widows' system continued to show a value for Policy 2 - when no value actually existed, and annual statements continued to be issued for the policy.

14. Scottish Widows has reproduced the 'new business documentation which it says would have been issued in respect of Policy 1. The (undated) template letter refers to a Scheme name of 'Combined Composite Technologies Ltd [Borden]’, an assumed start date of 1 June 2006 and total monthly contributions of £466.

15. Scottish Widows has re-produced copies of the pension statements it says would have issued to Mr N on 2 May 2007. The statement for Policy 1 shows payments received to 31 March 2007 of £4,663. The statement for Policy 2 shows no contributions received during the statement period 1 June 2006 to 30 April 2007.

16. Scottish Widows has re-produced copies of the pension statements it says it would have issued to Mr N in respect of statement periods ending in 2008. The statement for Policy 1 shows payments received in the statement period of £5,522. The statement for Policy 2 says “no payments have been received during this statement period”.

17. Scottish Widows says a material difference in the statements for Policy 2, and those issued for Policy 1, is that Policy 2 refers to 'Hexion UK Limited' whilst the statements for Policy 1 refers to 'Combined Composite Technologies'. Scottish Widows says another significance difference is that the statements for Policy 2 shows no

contributions. Scottish Widows says Mr N did not query why he was receiving two sets of statements.

18. Mr N says he believed he had a separate policy with Scottish Widows under the scheme of 'Combined Composite Technologies Limited (Borden)' - Policy 1.

19. Mr N says he has been receiving yearly statements for Policy 2 since 2007, and, very recently, he has had access to the performance of Policy 2 online - which in addition to the statements, support his belief that he has two separate policies.

20. In 2012, Mr N says he was diagnosed with a heart condition. He has worked infrequently since then.

21. Mr N was absent from work from November 2012 until June 2014, when he attempted to return to work for the Company in a different role. In August 2014 the Company's insurer ceased income protection payments but reinstated the benefit after Mr N successfully appealed their decision.

22. Scottish Widows acknowledges that the most recent annual statement in respect of Policy 2 was issued on 3 May 2016, which quoted a fund value of £73,009. Scottish Widows accepts that Mr N obtained a quotation online for Policy 2 which showed a value of £73,159.

23. On 12 August 2016, Mr N says he checked his pension online as a matter of routine, and also because he was approaching his retirement in December 2016, but there was no record of Policy 2.

24. Further comments from Mr N are set out below.

- He relied on the information in good faith. When he spoke to Scottish Widows in July 2016, the agent confirmed his understanding that a pension pot of around £75,000 was available to him under Policy 2.

- He would not have spent money on a caravan and a new conservatory had he known the correct position. He could have continued working part-time - passed his normal retirement age, and paid additional contributions to mitigate the loss of the expected (higher) benefits.

- The Company replaced him as he was due to retire in December 2016. He cannot continue working in any capacity because of his heart condition.

- He expected his income to be much higher in his retirement - based on the fund values under the two policies. His total fund value is significantly less than he had expected.

25. Scottish Widows says it is unable to agree Mr N's request to reinstate Policy 2 as all the benefits he is entitled to are available under Policy 1. Scottish Widows has offered

Mr N £1,500 in recognition of the disappointment he has suffered because of its mistakes.

26. Mr N says he finds it particularly frustrating that Scottish Widows continue to deny the existence of Policy 2 despite having issued information on the policy for more than 10 years.

27. Mr N considers an amount in the region of £80,000, to make up for the additional funds he has allegedly lost, would be reasonable compensation.

Adjudicator's Opinion

28. Mr 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 briefly below:

    - He received his first pension statement for Policy 2 in May 2007 - having received a statement the previous month for Policy 1.
    - He applied for one policy in late May 2006. Based on his gross salary of £43,050, the total (employee and employer) contributions would have been in the region of £4,660 over a 10 month period to 31 March 2007. But the sum of the total contributions on the two statements amount to over £9,000.
    - Apart from the fact that the statements showed two different policy numbers, the sum of the total contributions, ought to have given him sufficient reason to suspect that a mistake had been made.
    - Had he made enquiries at the time, it is likely that he would have been alerted to that fact.
    - The mistake went unnoticed by Scottish Widows for over a decade. But this does not negate the view that he should reasonably have realised the error in 2007.
    - His benefits were not actually in payment at the time of the expenditure, nor had he received confirmation that Scottish Widows was about to make payment. Consequently, the act on the part of Mr N was not reasonably taken in reliance on the misinformation.
    - Moreover, the fact that he went ahead with the expenditure without confirmation of the additional payment from Policy 2, indicates that he may have done so regardless.
    - The amount of £1,500 offered by Scottish Widows is sufficient compensation for the significant loss of expectation he has clearly suffered.

29. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N has provided further comments but these do not change the outcome.

I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

30. Mr N says the Adjudicator's Opinion implies that there was an obligation on him to notice that a mistake had been made and to have queried why he was receiving two sets of statements.

31. Mr N says, had Scottish Widows notified him at the time that his policy had been set up incorrectly, or the statements had showed the same values, he may have queried it. But he had no good reason to. The statements were not identical. And, critically, Policy 2 continued to grow at a comparable rate to Policy 1.

32. Mr N says Scottish Widows made the mistake by not writing to him, and compounded the error by continuing to provide information over a 10 year period showing an increasing fund value under Policy 2. Mr N says Scottish Widows' repeated misstatements supported his understanding that the details were correct.

33. In July 2016, he obtained an update online and received verbal confirmation from Scottish Widows of the values. Mr N says there was nothing more he could reasonably have done to obtain confirmation of his funds, (and there were no other sources of information for him to rely on). In view of this, he does not agree that he acted unreasonably by making capital expenditure in anticipation of receiving the funds. Mr N says, while he accepts that he cannot profit from a mistake, he has clearly changed his position based on his reliance - he should therefore be compensated for his financial loss.

34. Mr N says he can prove that he spoke to Scottish Widows and obtained confirmation of the values. Mr N says he has tried to obtain evidence to corroborate that he discussed the policies with Scottish Widows on other occasions: his telephone service provider has identified other calls but says those calls were very short, and because of the Data Protection Act it is unable to provide details.

35. In regard to Policy 2, I fully acknowledge that Scottish Widows failed to provide correct details over a considerable period of time.

36. The statements constitute negligent misstatements on the part of Scottish Widows. Scottish Widows has compensated Mr N for the disappointment, distress and inconvenience he has suffered in relation to this matter.

37. It was reasonably foreseeable that Mr N would act on the details provided. Nonetheless, I do not consider that Mr N can demonstrate that he reasonably relied taken on the misinformation to his detriment. I have therefore restricted my findings to this point.

38. Mr N had said that he assumed that the existence of two separate policies was explained by the fact that he and his employer contributed, ie he thought there was a

separate policy for each set of contributions. However, that assumption is not supported by the rates of contribution recorded against each policy. I conclude that Mr N had sufficient reason to suspect that the existence of two policies under two of the associated company names was a mistake and could not reasonably rely upon the statement to incur expenditure without first confirming his entitlement. There is no evidence that such an entitlement was confirmed prior to irreversible expenditure being incurred in reliance upon it.

39. The provision of the misleading benefit statements was undoubtedly maladministration. However, I bear in mind that Scottish Widows investigated Mr N’s complaint thoroughly and immediately made an offer of compensation. That compensation was in the range which I would ordinarily award for significant distress and inconvenience of the type suffered by Mr N.

40. Therefore, I do not uphold Mr N’s complaint.

Karen Johnston

Deputy Pensions Ombudsman
31 May 2017