Ombudsman's Determination

Applicant	Mr Y
Scheme	Civil Service AVC Scheme (the **CSAVC Scheme**)
Respondent	Scottish Widows Limited (**Scottish Widows**)

Outcome

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

Complaint summary

2. Mr Y says that Scottish Widows switched his additional voluntary contributions (**AVCs**) into its loss making Building Society Fund, which is closed to new investors, without his authority.

3. He was not provided with information on the fund, including the expected rates of return and past performance. The risks associated with investing in the fund were also not explained to him.

Background information, including submissions from the parties

4. Mr Y's AVCs were originally invested in the Scottish Widow's unitised with profits fund.

5. Under a unitised with profits fund, unit prices increase in line with bonuses declared. A market value reduction (**MVR**) may be applied if the policyholder surrenders the policy or draws benefits before or after the retirement date originally selected.

6. In May 2008, Scottish Widows closed the Building Society Fund to new investors.

7. On 16 September 2009, Scottish Widows wrote to Mr Y regarding his AVCs (the **September Letter**). Scottish Widows highlighted that he was approaching the "selected retirement date" (**SRD**) under his policy.

8. In the September Letter, Scottish Widows explained that there were several decisions Mr Y needed to make in connection with his SRD. Under the heading "**Timetable of Events**," Scottish Widows stated that:

   "**As soon as possible** [original emphasis]

If you have already decided not to take the pension benefits on the selected retirement date, please complete and return the enclosed 'deferral' form…

6-8 weeks before the selected retirement date
Scottish Widows will issue an illustration detailing what the pension benefits might be. You can request further illustrations on differing terms …"

9. The September Letter provided various options to Mr Y. Under option four, Scottish Widows outlined Mr Y's option to delay drawing his benefits. Regarding this, Scottish Widows advised that:

"If any existing with-profits units are to remain in the with-profits funds, the new selected pension date must be at least three years after the original retirement date to avoid the imposition of a Market Value Reduction (See 3. Market Value Reduction below). If the new selected retirement date is less than 3 years from the original retirement date, then any funds held in with-profits must be switched to a unit-linked fund or funds of your choice to avoid a Market Value Reduction. If no unit-linked funds are selected, we will automatically switch any with-profits units to the Building Society Fund."

If benefits are taken or switched to another fund before the new selected retirement date, a Market Value Reduction may apply to the with-profits units.

…

3. Market Value Reduction – Important Information
Scottish Widows may apply a Market Value Reduction (MVRs; also referred to as Market Level Adjustments - MLAs) to the With-Profits Fund in which some of the pension contributions may be invested. An MVR is introduced when the face value of the units held, together with any terminal bonus which would apply on cashing them in, exceeds the value of the underlying investments in the fund.

An MVR has the effect of reducing the value of with-profits units and is designed to protect the interests of those who maintain their investment in the With-Profits Fund. This is part of our prudent and fair approach to managing our customers' money.

Because the benefits are due to be paid on **14 February 2010**, the selected retirement date originally chosen when you started the policy, no MVRs will be applied to the plan if you take the benefits on this date. If however, you decide to take the benefits before or after this date, the cash-in value of the units will be reduced by any MVRs applying at the time when you take the benefits, unless you take actions as outlined in Option 4 above."

10. Scottish Widows warned that if Mr Y did not contact Scottish Widows regarding his options, any existing contributions would cease. His accumulated units would "remain within the investment fund in place" as at the SRD. The new SRD would be set at age

75, "with no option to bring it forward". However, it would be possible for Mr Y to take benefits at any time before age 75 on request.

11. On 8 January 2010, Mr Y was provided with a retirement illustration as at February 2010, his 60th birthday. He was asked to contact his "Civil Service" employer for the relevant claim forms and authority to settle any claim.

12. Scottish Widows quoted a fund value of £9,806, inclusive of a terminal bonus of £97.

13. Mr Y was informed that his fund value could provide a level pension of £502 per annum. Alternatively, a tax free cash sum and pension of £2,451 and £376 per annum respectively. Scottish Widows indicated that there were other options available to him, which he should discuss with his financial adviser.

14. Scottish Widows cautioned that if Mr Y had investments in the with profits fund, these may be subject to a MVR if he transferred, switched, or drew his funds at any time other than at age 60.

15. Mr Y was asked to read the September Letter, alongside the "the Key Features document."

16. On 2 March 2010, Mr Y was notified that Scottish Widows had deferred his pension date to age 75. Scottish Widows confirmed that the units held in its unitised with profits fund had been switched to its Building Society Fund.

17. Scottish Widows included a statement of the investment held in Mr Y's policy as at 15 February 2010. This showed "cancelled" units worth £9,809. The statement confirmed that "accumulated units" of the same value were held in the Building Society Fund.

18. During the period that followed, Scottish Widows sent Mr Y yearly pension statements. These showed unit holdings in the Building Society Fund worth approximately £9,800.

19. Mr Y's yearly AVC plan statements as at April 2016 and April 2017 confirm a fund value of £9,707 and £9,675 respectively.

20. In November 2017, Mr Y contacted Scottish Widows regarding the switch of his investment to the Building Society Fund. He requested performance data on the fund to calculate his financial loss.

21. On 16 November 2017, Scottish Widows advised that Mr Y's units were moved on his original retirement date in February 2010. In the letter, Scottish Widows stated that:

> "Correspondence is sent out prior to this date, notifying our clients that their retirement date is approaching…If you are invested within the Unitised with Profit fund and Scottish Widows do not receive any contact from you to either:
>
> - Take their benefits
> - Wish to defer their retirement age [sic]

The process is, we will automatically move the investment into the Building Society fund along with deferring the nominated retirement date to 74.

The reason this process is in place is to protect the Terminal Bonus on your policy at your nominated retirement date. If we didn't do this it is possible the Terminal Bonus could drop or be lost completely."

22. Mr Y was offered the option of reinvesting in the unitised with profits fund. To avoid incurring penalties, Scottish Widows said that Mr Y would have to remain invested within the unitised with profits fund, and defer taking his benefits for a minimum of three years. The "only penalty free date" would be his new retirement date.

23. Dissatisfied with that reply, Mr Y complained to Scottish Widows.

24. On 20 November 2017, Scottish Widows issued its response. Scottish Widows explained that it writes "to customers approximately 6 months and then 6 weeks before the Nominated Retirement Date". The letters include all the available options in respect of the policy and what would happen if no contact is received regarding this.

25. Scottish Widows enclosed a copy of the letter issued to Mr Y on 16 November 2017. Scottish Widows said that the letter confirmed "when the change to the Building Society Fund took place and the reason why [Scottish Widows transferred his] investment to this fund." Mr R was asked to contact Scottish Widows if he was unhappy with any part of the decision not to uphold his complaint.

26. Mr Y sent a further letter to Scottish Widows on 3 December 2017. He asserted that his policy had lost value following the "unauthorised" transfer, due to charges and the Building Society Fund underperforming.

27. Mr Y highlighted that information on the Building Society Fund's past performance was not available online. These details had not been provided to him, even though he had requested it.

28. Mr Y stated that Scottish Widows' reasons for moving his AVCs, were "confusing and unacceptable." He pointed out that the fund he had been invested in was still available to him to reinvest. He was unable to comprehend how a switch to a loss making fund, without his authority, could have been in his interests.

29. Mr Y asked a number of questions regarding Scottish Widows' policy of switching investments into the Building Society Fund. He asked for information on the fund, including the reason it was used for the switch, the fund's performance since 2008, the date it was last profitable, and the size of the fund. Mr Y explained that he needed the information to have a full view of events and to value his financial losses.

30. On 16 January 2018, Scottish Widows addressed the questions Mr Y had raised in his letter of 3 December 2017.

31. Scottish Widows stated that the Building Society Fund had closed to new investment in May 2008. However, the fund had not been replaced. Scottish Widows advised that the practice of automatically moving investments into a building society fund had been in place for some time. The process was still used where Scottish Widows does not receive confirmation to defer the [SRD] in respect of the unitised with profits fund.

32. Scottish Widows stated that the Building Society Fund was used for the above purpose as there was "generally not much negative movement", although there had "been a steady fall in the Bid Price". Scottish Widows explained that the fund does not produce a profit.

33. Regarding the growth Mr Y would otherwise have earned in respect of his policy, Scottish Widows advised that:

> "There is no way of telling as the previous fund was Unitised With Profits and calculations are very difficult but it could have been higher."

34. Scottish Widows enclosed a fund factsheet for the Building Society Fund (the **Factsheet**). The notes in the Factsheet state:

> "please note that this fund is not available for new investment. Investors should note that as a result of the persisting low interest rate environment this fund's share price has seen a fall over the period from October 2009. This means that the return will not cover the total fund charges and so has been negative. For information on how the fund has performed, see page 2 of this factsheet."

35. The Factsheet explains that the Building Society Fund aims to provide long term growth by investing mainly in a range of higher rate building society deposit accounts. In certain circumstances, part of the fund may invest in other types of short term deposits.

36. The Factsheet states that information on the general and specific risks associated with investing in the Building Society Fund is available in the relevant fund guide, or the KIID [Key Investor Information documents], where applicable.

37. Mr Y's position is summarised below:-

- He is disabled and has been in poor health since 1997, when he was diagnosed with a progressive medical condition.

- He did not become aware that Scottish Widows had switched his investment until 2017. Due to his health, he found it difficult to deal with mail that required action without assistance.

- He received annual reports in respect of his AVC policy, these did not require him to take any action.

- He left Scottish Widow's letters from 2009 unopened as he assumed they were [also] investment reports. When family members became aware of this, they insisted that he deal with the unopened mail that he had put aside.

- When he noticed that his AVCs had been switched without his permission, he tried to obtain further information. Including, "an acceptable explanation" of why his AVCs were transferred into a loss making fund. Scottish Widows failed to provide this.

- Scottish Widows is discriminating against members of the CSAVC Scheme by restricting them to a range of poor performing funds. He suspects that they would not have paid AVCs if the position had been made clear to them in the "recruitment literature."

- He is concerned that the process of switching funds into the Building Society Fund was still in place in January 2018, despite the fund being closed to new investors.

- He did not receive any information that explained the nature of the Building Society Fund. He made several requests for data so that he could calculate his financial loss, without success.

38. Scottish Widows' position is summarised below:-

- Scottish Widows issued annual statements to Mr Y following the switch of his investment. Consequently, had Mr Y requested to be invested back into the unitised with profits fund, this would not have been backdated.

- At no time did Scottish Widows state that it was in Mr Y's interests to move his investment to the Building Society Fund. His units were switched because Scottish Widows did not receive a response from him.

- The Building Society Fund is still open to existing investors. Mr Y was considered an existing investor.

39. Mr Y subsequently moved his investment into Scottish Widows' "All Share Tracker" fund. His AVCs were worth £8,950 as at 5 April 2018, approximately £860 lower than the value of £9,809 on 15 February 2010.

40. Mr Y says that the value of his AVCs fell due to management costs and losses made by the Building Society Fund. He would like to be compensated for this.

41. During the investigation, Mr Y was provided with fund prices as at 26 August 2019 in respect of the Building Society Fund. Mr Y was also provided with a link to Scottish Widows fund prices.

Adjudicator's Opinion

42. 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 below:-

- Scottish Widows could not have known Mr Y's personal circumstances at the time. It is generally expected that pension scheme members will read information that is sent to them about their pension. It is expected that a representative would be appointed to act for the member if he or she is unable to deal with financial matters.

- The Adjudicator accepted that Mr Y did not explicitly provide consent for the switch of his investment to the Building Society Fund. In view of the sequence of events, the Adjudicator did not agree that Scottish Widows needed to obtain his express permission before doing so.

- During the complaint process, Mr Y was given the option to be reinvested in unitised with profits. The Adjudicator considered that Scottish Widows could not reasonably be expected to do any more in the circumstances.

- The Factsheet, of which Mr Y was sent a copy on 16 January 2018, details the performance of the Building Society Fund dating back to 2012.

- The CSAVC Scheme is linked to the main Civil Service scheme. It is up to the main scheme to decide the suitability, or otherwise, of the type and range of investments to be made available to members though the arrangements it has with Scottish Widows.

- It is a commercial decision for Scottish Widows which of its funds it offers as part of an AVC arrangement. The Civil Service scheme can either accept that range or move to an alternative provider. The Pensions Ombudsman has no regulatory powers and would not look to direct that Scottish Widows provides a wider range of funds to the Civil Service scheme.

- A complaint about the performance of a fund is not an allegation that something has necessarily gone wrong in the administration of the scheme. What determines how a fund performs depends on various factors, including decisions made by the investment manager and the wider economic environment.

- The decisions made by investment fund managers are for them to make and are not for this office to comment on. Mr Y has not put forward any allegation that the actions of Scottish Widows somehow caused the poor performance of the fund.

- The Scottish Widows' complaint manager assigned to Mr Y's case, informed this office that he has been with Scottish Widows for 20 years. The process of automatically switching investments, in circumstances such as these, has been in place during his time with Scottish Widows.

- The fact that Scottish Widows' replies were not as comprehensive as Mr Y may otherwise have liked, is not sufficient reason to justify a finding of maladministration.

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

44. Mr Y explains that his reason for commenting on the performance of the Building Society Fund, is to demonstrate that it is not an investment fund that a responsible scheme administrator would knowingly transfer members into.

45. Mr Y argues that Scottish Widows has a responsibility to administer the CSAVC Scheme in the members' interests. The process Scottish Widows has adopted, should be in place to protect the value of the Building Society Fund. In his view, it is certainly not in the interests of the CSAVC Scheme members. If this policy has been running for over twenty years, he finds it difficult to believe that there have not been more complaints to this office regarding this.

46. Mr Y considers that it was maladministration for Scottish Widows to intentionally transfer him into a fund with a history of only making losses, which would persist into the foreseeable future. The fact that Scottish Widows continues to transfer members into the fund, is evidence of ongoing maladministration.

47. Mr Y maintains that the Building Society Fund should be closed. It appears that the fund is not open to new investors and that it is only available to accept transfers through Scottish Widow's policy of switching investments.

48. Mr Y says that he disagrees with the information Scottish Widows provided during the investigation. He questions how the Building Society Fund could be closed but still be open to existing investors. [In any case,] he would not have been an "existing member," at the point his investment was moved across.

49. Mr Y says that he accepts that he was notified at the time that his pension date had been deferred and that his units had been switched. However, he was not provided with any information on the Building Society Fund, the fund his units were moved into. Scottish Widows could not confirm when it introduced a policy of automatically switching AVCs to the fund. Nor could Scottish Widows confirm what its policy was prior to this.

50. Mr Y argues that Scottish Widows has been vague in its responses to him and to this office. Scottish Widows must have records of its funds and procedures. He still wants to know the number of investors that are invested in the Building Society Fund.

51. Firstly, I note that Mr Y's main issue is that he did not sign up to the Building Society Fund. I acknowledge that his AVCs were moved by default.

52. A building society fund would be expected to be less volatile than a fund that is invested in equities. I recognise that Mr R's AVCs fell in value. Understandably, this would have caused him some concern, not least because he did not become aware of the position until November 2017.

53. I empathise with the personal circumstances Mr Y was faced with at the time. Having considered the sequence of events, it is difficult for me to conclude that his missed opportunity to switch his investment, before his funds were moved automatically by Scottish Widows, amounts to actual financial loss.

54. Scottish Widows wrote to Mr Y in advance of his SRD. Scottish Widows confirmed the action it would take if there was no response from Mr Y. Mr Y subsequently received yearly statements that confirmed that his AVCs were invested in the Building Society Fund. The statements showed the decreasing value of the investment. There is nothing to suggest that Scottish Widows was aware of Mr Y's circumstances.

55. In the absence of compelling evidence to support that Scottish Widows' administration of the fund caused the financial loss Mr Y is claiming, I am unable to direct that Scottish Widows make good that loss.

56. Regarding Scottish Widows' management of Mr Y's enquiries and his subsequent complaint. I note that Scottish Widows was reasonably prompt in responding to Mr Y. However, I accept that Mr Y's initial enquiries could have been better managed by Scottish Widows.

57. It would have been helpful if Scottish Widows had provided Mr Y with details on the Building Society Fund's past performance when he first requested this. It would also have been helpful if Scottish Widows had signposted Mr Y to where he could obtain details on the risks associated with investing in the fund. That said, I am not convinced that this materially changes the outcome in the circumstances.

58. In taking this view, I have taken into account the fact that Mr Y was sent the Factsheet on 16 January 2018. There was nothing preventing him from requesting either the relevant fund guide or KIID. I have also noted the information that was provided by Scottish Widows in the letter accompanying the Factsheet. I find that this was sufficiently detailed.

59. I do not uphold Mr Y’s complaint.

Anthony Arter

Pensions Ombudsman
9 December 2019