

## Ombudsman's Determination

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| Applicant  | Mr S  |
| Scheme     | Scottish Widows Personal Pension Plan, S2P Replacement Plan and Stakeholder Pension Plan ( <b>the Plans</b> ) |
| Respondent | Scottish Widows Limited ( <b>Scottish Widows</b> )  |

## Outcome

1. Mr S' complaint against Scottish Widows is partly upheld and Scottish Widows shall pay Mr S £1,000 in respect of the serious distress and inconvenience which Mr S has suffered.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr S complains that Scottish Widows have imposed and enforced identity verification requirements that, he says, he is unable to fulfil. As a consequence, Mr S is unable to access the benefits held under the Plans.

## Background information, including submissions from the parties

4. Mr S holds three pension plans with Scottish Widows referenced N80803X, P56879Q and 7410049. Mr S resides in Mexico.
5. On 15 March 2016 Mr S wrote to Scottish Widows about encashing the Plans. In his letter he said:

"I am a permanent resident in Mexico, and have been living here continuously for over 10 years. I do not have any investments or other form of income in the UK and am no longer in Self-Assessment. I would like to take the maximum tax-free cash sum (this would presumably be 25% plus the basic single person's allowance)...I can be contacted on the above email address. Please advise me on this matter, and whether you would accept a signed fax, as sending a letter by courier would be very expensive. I cannot receive fax but can provide a contact telephone number if you wish. Please do not use post, as it takes around three months."

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The letter included the name, address and account details for Mr S' bank in Mexico.

6. Scottish Widows responded on 18 March 2016, in relation to policy 7410049, and said "Under UK legislation we must verify all parties we pay money to and we may require Identification and Verification documents from yourself to enable any encashment."
7. On 5 April 2016, following a telephone conversation with Mr S, Scottish Widows sent an email to Mr S setting out its specific requirements for verification of identity. Mr S says that during that conversation he confirmed that he no longer wished to encash policy 7410049. The email stated that, for non-UK residents, Scottish Widows required a certified copy of two of the following documents. One to verify identity and the other to confirm address:
  - Current signed passport
  - National identity card
  - Photo-card driving licence
  - Utility or Rates bill
  - Bank Account statements
8. On 11 April 2016, Mr S sent Scottish Widows an email, about policies P56879Q and N80803X, and said:

"The best Evidence of Address document that I can provide is a bank statement of 2007. I have no more recent statement, since at that time I chose to no longer receive bank statements through the post...given that payment is to be made direct to the account to which the statement relates, I fail to understand why any further proof of address would be required. You will note that this bank statement contains the same details that you hold and have already used. I received a much larger sum from Scottish Widows in this account in late 2013, as surrender of an OEIC (11215134) and a Mortgage Plan (K168358K) without having to furnish any such proofs.

I cannot provide Evidence of Address in any other of the forms specified for the following reasons:

- My national identity card contains no address information
- I hold no driving licence
- Utility bills are of no use as they relate to the residential address, and during over ten years that I have been living in Mexico, I have used a separate address to receive mail. This is since neither of my two residences is a deliverable postal address...In the case of property tax, nothing is sent (or delivered); one pays at the council offices, and again the receipt issued contains the address to which the payment relates....

Therefore, I attach the following certified documents:

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- Bank Statement (as Evidence of Address)
- National ID Card (as Evidence of name)
- Birth Certificate (as Evidence of Date of Birth)

These are certified by a notario public (in Mexico this is an experienced government-appointed lawyer). They insisted on doing the certification in the manner customary in Mexico. In particular I was unable to prevail upon them to mark the copies as “original seen”...I testify here that they did act on the originals...Also, their certification does not include their address – however I have included a scan of their card containing this...”

9. On 14 April 2016, Scottish Widows sent a letter to Mr S, in relation to Policy P56879Q, and said:

“...Scottish Widows are required under UK legislation to verify your identity(ies). To enable us to do so please supply two types of evidence...one from Part A and one from Part B.

All documentation must be certified by one of the parties listed on the enclosed form.”

10. On 21 May 2016, Mr S sent a further email to Scottish Widows as he had not received a response to his email of 11 April 2016.
11. On 26 May 2016, Scottish Widows sent another letter to Mr S, in relation to policy P56879Q, and said “Under UK legislation we must verify all parties we pay money to and we may require Identification and Verification documents from yourself to enable any encashment.”
12. On 1 June 2016, Scottish Widows wrote to Mr S, about Policy N80803X, saying that it still required valid documentation to verify his name and address.
13. On 16 June 2016, Scottish Widows wrote to Mr S, about Policy N80803X, and said:
- “Thank you for returning your documentation relating to your retirement of the above-mentioned policy. Unfortunately, I am unable to process your retirement from the documentation you have provided.
- As we have made three requests for the additional information without reply, we must assume that you do not wish to proceed with this claim and we are therefore terminating this claim.”
14. On 26 June 2016, Mr S emailed Scottish Widows saying that he had been unable to find any information about its Internal Dispute Resolution Procedure. The email was headed “P56879Q and N80803X.”
15. Scottish Widows responded by email on 27 June 2016 and said it was “not aware of the expression “Internal Dispute Resolution Procedure”.

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16. On 30 June 2016 Scottish Widows sent Mr S a letter about Policy P56879Q, saying that it could not accept photocopies or scanned documents and would require original certified copies of the verification documents to be sent by post.
17. On 10 July 2016 Mr S emailed Scottish Widows to complain about its identification and verification process.
18. On 15 July 2016, Scottish Widows sent Mr S an email, in response to his email of 10 July 2016, saying it would appreciate the opportunity to discuss the matter further with him and asking him to call them or alternatively email confirming a convenient time for Scottish Widows to contact him.
19. Mr S responded on 17 July 2016 saying he was not prepared to discuss the matter over the phone as he had a hearing impairment and, also, it was not an appropriate way to handle a complaint.
20. Scottish Widows emailed Mr S on 1 August 2016, about Policy P56879Q, and said:

“In order to proceed with the encashment of the above policy we require to see original or certified copies of your proof of identity.

I realise there have been various issues providing this and apologise for any inconvenience caused.

We cannot accept copies sent from private email accounts, however if you could arrange for a certified copy of your Identity Card to be emailed by the HSBC branch you have supplied the address for we would be able to accept this as verified proof.

Please advise the branch to include in their email:

- The name and staff number of the person verifying the ID
- The branch address and contact details
- Any specific wiring instructions to ensure payment reaches you
- Confirmation (sic) that you are the account holder.

Alternatively if the branch cannot facilitate this please send by courier the original or certified copies.”

21. On 22 August 2016, Scottish Widows sent a letter to Mr S in relation to the email it had sent to him on 1 August 2016. The letter said:

“We would be grateful if you could request from the HSBC branch you have supplied the address for to send us a certified copy of your identity card to enable us to proceed.

For a document to be properly certified, it should be:

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- Stamped original seen and dated
- The name of the certifier is visible
- The branch and address of the bank.

You can also send this to us by courier, please note that we will only accept the original or the original certified copies.”

22. On 24 August 2016 Scottish Widows responded to the complaint Mr S raised in his email of 10 July 2016 as follows:

“We appreciate the difficulties you may face with the postal services in Mexico, Scottish Widows is a UK based company and our processes are set to suit the majority of our customers...

Until such times as all of our requirements are met, no claim can be initiated. This would include satisfying any Identification and Verification requirements. These are required under UK legislation and we would ask all customers to satisfy these requirements prior to the settlement of these types of pension policies.

I have checked the history of your case in depth and can find no evidence that we have delayed in any response to your enquiries. We have responded to your correspondence in a timely manner each time...”

### Mr S' position

23. Mr S has made the following submissions:-

- Scottish Widows state that the identification and verification documents are required under UK legislation. Scottish Widows' references are deceitful and have nothing to do with any measures imposed by the UK government.
- He has had considerable difficulties dealing with Scottish Widows and considers its policies abusive and fraudulent.
- Scottish Widows require verification documents to encash his policies despite the fact that, just two years earlier, he had encashed a Scottish Widows investment plan and only a signed letter was required.
- The money from the policies was to be paid to the same bank account to which the money from the investment account had been paid.
- Government documents indicate that, as a face-to face customer taking the lump sum as part of an ongoing business relationship, no verification documents should have been required.

- Even if verification were appropriate, Scottish Widows' specifications and requirements are erroneous and grossly excessive in relation to what the government requires in its anti-money laundering regulations.
- It was only when he said he was going to make a complaint that Scottish Widows started responding to his emails by email rather than letter, even though he had made it clear that post was not a practical option. As a result, it was months before he received its replies.
- By the time Scottish Widows agreed that his documents were acceptable, although he still had to post them, the value of his policies were several thousand pounds lower than they had been when he chose to encash them.
- On 8 and 9 November 2016 Scottish Widows tried to ring him on 5 occasions all at un-social hours. This was clearly an attempt to get him to withdraw his complaint.

### **Scottish Widows' position**

24. Scottish Widows' say:-

- The documents they have received to date only satisfy the criteria for verifying Mr S' address, not his name.
- His National Identity card would not verify Mr S' name. As Mr S does not have a driving licence and he is not an EEA member, only a UK passport would suffice.
- Bank statements from HSBC would verify Mr S' address. HSBC can certify both the bank statements and the passport. It would be preferable if the documents could be certified by a branch manager, who should clearly show that the original has been seen and that it was a true copy. The name, address and position of the certifier should also be shown.
- The reason Mr S was able to take monies for other investments was because, at that time, Anti Money Laundering exemptions applied to those policies. Those exemptions do not currently apply to these policies.
- The offer for Mr S to email the documents should not have been made.

25. Mr S confirmed that he does not hold a UK passport or a Mexican passport.

26. Scottish Widows has said that, as Mr S does not hold a passport for either the UK or Mexico, it will accept a letter of introduction from the final financial exclusion list which include a letter of introduction from a person of responsibility confirming both the name and address of the customer. The person of responsibility must be amongst a doctor, solicitor, barrister, accountant, civil servant, staff in a higher education authority, minister of religion, teacher, midwife/district nurse who has visited at home,

hostel manager, social worker, armed services officer, UK forces base commander, care home manager, prison governor, probation officer or police officer.

27. Mr S has declined to provide a letter of introduction and maintains that Scottish Widows is “guilty of criminal misconduct in imposing onerous verification requirements.”

## **Adjudicator’s Opinion**

28. Mr 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:-

- The UK anti-money laundering regime commenced with the Money Laundering Regulations 1993, which came into force on 1 April 1994. However, the current regulations are The Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017, which came into force on 26 June 2017 (**the 2017 Regulations**).
- HM Revenue and Customs (**HMRC**) require businesses subject to the money laundering regulations to comply with certain obligations such as ‘customer due diligence’ measures to ensure that its customers are who they say they are. This includes:

“...taking steps to identify your customers and checking they are who they say they are. In practice this means obtaining a customer’s:

- name
- photograph on an official document which confirms their identity
- residential address and date of birth

The best way to do this is to ask for a government issued document like a passport, along with utility bills, bank statements and other official documents...

In some situations, you must carry out ‘enhanced due diligence’. These situations are:

- when the customer is not physically present when you carry out identification checks
- when you enter into a business relationship with a ‘politically exposed person’ - typically, a non-UK or domestic member of parliament, head of state or government, or government minister and their family members and known close associates

- when you enter into a transaction with a person from a high risk third country identified by the EU
- any other situation where there's a higher risk of money laundering

The enhanced due diligence measures for customers who are not physically present and other higher risk situations include:

- obtaining further information to establish the customer's identity
  - applying extra measures to check documents supplied by a credit or financial institution
  - making sure that the first payment is made from an account that was opened with a credit institution in the customer's name
  - finding out where funds have come from and what the purpose of the transaction is..."
- Scottish Widows is subject to money laundering regulations and it was entitled to have carried out the identity and verification checks, and to have asked Mr S to provide the information in the format it did. The Adjudicator was of the view that the request complied with the 2017 Regulations and the HMRC guidelines.
  - Mr S believes that no verification documents were required in his case, as he is a face-to-face customer with an ongoing business relationship. Nonetheless, the HMRC guidelines say that 'enhanced due diligence' should be carried out when the customer is not physically present when the identification checks are carried out. As Mr S resides in Mexico, and so was not physically present for Scottish Widows to carry out the face-to-face checks, it follows that verification documents would be required.
  - Contrary to Mr S' preference to communicate by email due to a hearing impairment, and his comments that post was unreliable and not a practical option, Scottish Widows mostly corresponded by letter. This was unhelpful and prolonged the process but does not amount to maladministration. Although Scottish Widows should have taken Mr S' circumstances into account, that does not extend to it accepting verification documents by email.
  - Scottish Widow's actions are in compliance with the 2017 Regulations and HMRC guidelines. Scottish Widows has also informed Mr S of alternative options for providing acceptable documentation, and it is now for him to decide whether he wishes to take up any of those options.
29. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Following my initial review, the Adjudicator issued a second Opinion partly upholding the complaint due to the communication and customer service issues experienced by Mr S. Scottish Widows offered £1,000 to Mr S in respect of the

distress and inconvenience these issues caused to him, but Mr S did not accept the second Opinion.

30. Mr S provided some further comments which I have considered together with the approach taken by Scottish Widows and I uphold Mr S' complaint in part in respect of the serious distress and inconvenience which Mr S has suffered..

### **Ombudsman's decision**

31. Mr S says that the applicable legislation is the Money Laundering Regulations 2007 (the **2007 Regulations**), not the latest update introduced in the 2017 Regulations. Furthermore, he says that he was initially present 'face-to -face' when the Plans commenced, and identification checks were carried out. He has continued an ongoing business relationship with Scottish Widows, so no new verification is required. Scottish Widows has not accepted any address verification documents he has provided so far, and it is ridiculous to reject his National Identity card as insufficient as a form of name verification. Scottish Widows initially provided guidance showing that a National Identity card was acceptable. He insists that he has carried out other transactions from abroad and not faced similar issues with the transfers.
32. Mr S has also raised many other issues concerning his complaint and past correspondence with my office, however, these have been dealt with separately, so I do not intend to address those matters here.
33. I note that Mr S' issues started in 2016 and still remain in 2019. In this case, the 2007 Regulations initially applied but the 2017 legislation introduced improved checks and protections. I should perhaps explain that the intention of all such legislation, among other things, is to place responsibility on providers and provide protection for customers, such as Mr S, from financial loss and illegal money laundering activity due to lax checks. Scottish Widows has an obligation to comply with legislation, allowing for discretion where possible. For his part, Mr S has a responsibility to comply with the stated requirements before his instructions are carried out.
34. Essentially, Mr S recognises the various money laundering provisions but considers that they do not apply in his circumstances. Furthermore, he considers that Scottish Widows is being heavy handed in its interpretation and application of those provisions.
35. Regardless of whether the 2007 or 2017 Regulations apply, the outcome is the same, Scottish Widows has an obligation to carry out customer due diligence on existing customers like Mr S where, for example, the customer's circumstances have changed, or the customer is physically not present. Scottish Widows also has a responsibility to carry out ongoing monitoring of its customers and maintain up to date records. The exact nature of those due diligence checks, and the documents required, is down to the provider. Different providers will have largely similar criteria and there would be some element of discretion applied by providers in the detail and

level of customer due diligence verification documentation, so the acceptable documentation may differ in several areas.

36. Since Mr S had his initial face-to-face verification checks carried out, he has moved to Mexico and he is no longer a UK resident, so his circumstances have changed significantly. He is also seeking a cross-border transfer of funds to another account. For the reasons already set out by the Adjudicator, it is therefore right for Scottish Widows to carry out customer due diligence checks, notwithstanding that Mr S is an existing customer. I cannot comment on the previous instances where Mr S says that he has transferred funds, my review is limited to the facts of this particular case. What I can say is that I have not seen any evidence that Scottish Widows has acted unreasonably in the requirements provided to Mr S.
37. Mr S states that he has an ongoing business relationship and the transfer represents a transaction carried out within that relationship, rendering any further verification exercise unnecessary. As I have pointed out, this is not the case. Furthermore, Regulation 7(2) of the 2007 Regulations says that “a relevant person must also apply customer due diligence measures at other appropriate times to existing customers on a risk-sensitive basis”.
38. Regulation 27(8) of the 2017 Regulations also echoes this when it says:  
“A relevant person must also apply customer due diligence measures –  
(a) at other appropriate times to existing customers on a risk based approach;  
(b) when the relevant person becomes aware that the circumstances of an existing customer relevant to its risk assessment for that customer have changed.”
39. These provisions allow Scottish Widows an element of discretion in deciding whether customer due diligence should be carried out in specific cases regarding existing customers. I believe that the circumstances of this case provide sufficient grounds for Scottish Widows to decide to apply some customer due diligence measures following Mr S’ request.
40. I appreciate that Mr S is finding it difficult to comply with the due diligence checks requested by Scottish Widows, but that does not mean that those requirements are too onerous or not compliant with legislation. Under the 2007 and 2017 Regulations, Scottish Widows has to satisfy money laundering requirements. This includes taking fresh steps to confirm Mr S’ identity by asking for documentary evidence. I have seen no evidence to support Mr S’ claim that this is simply a convenient excuse to prevent him from taking his benefits.
41. Bearing in mind Mr S’ particular circumstances, Scottish Widows has tried to find other means of assisting Mr S to comply with its requirements. An attempt by my office to achieve a mediated resolution has also been rebuffed by Mr S. Mr S says that he does not have the usual items that providers would typically request, for example: passport; driving licence; and utility bills showing his home address etc. He

insists that Scottish Widows is being unreasonable. I do not hold Scottish Widows responsible for Mr S' inability to provide these documents.

42. In an attempt to move things forward, Scottish Widows now appears willing to accept documents readily available to Mr S as evidence of his address. Bank statements from HSBC, properly certified by the branch manager as original seen/ a true copy, might be sufficient in this respect. Also, Scottish Widows has suggested that Mr S should obtain a letter of introduction from the final financial exclusion list. Details of this has been provided to him. This can then be assessed by Scottish Widows and a decision taken regarding its suitability. To avoid any misunderstanding, Mr S should contact Scottish Widows directly to confirm exactly what is required in each case.
43. In my view, the proposals are sensible ones in order to resolve the situation while still operating within the money laundering regulations. It is now a matter for Mr S whether to accept the alternatives offered by Scottish Widows.
44. Clearly there have been repeated issues with the communication between Scottish Widows and Mr S. Scottish Widows attempted to correspond with Mr S via telephone and post, both methods he had already mentioned would present issues and considerable delay. The Adjudicator did not justify this and neither do I. This caused practical issues for Mr S, and considerable distress and inconvenience, without which it may have been possible to have agreed to the alternative proposals, which Scottish Widows is now suggesting that will meet with its due diligence requirements.
45. It is also clear that several misunderstandings have occurred between both parties. One such example is regarding the requirement for a National Identity card. Mr S has provided a form showing that a National Identity card would be acceptable as evidence of name. It is unclear when that form was provided to him, but a letter to Mr S dated 14 April 2016, includes a correct form which shows that a National Identity card would only be suitable as evidence of address if, in the case of a country in the European Economic Area, it has not already been used as evidence of name. I recognise that this would have been confusing for Mr S and I hope that he is now fully conversant with what is required and what is not acceptable. As always, it is best to obtain clarification.
46. Mr S' complaint was initially directed towards the Financial Ombudsman Service (**FOS**); however, I do not believe Mr S suffered any detriment as a result this. FOS is also able to deal with some types of pension complaints. There is an overlap with certain pension complaints which is addressed in a joint Memorandum of Understanding. My office has authority to deal with such complaints and has discretion to try and to resolve them in a variety of ways including arbitration, hence its referral from FOS to my Office.
47. In conclusion, it was perfectly proper in this case for Scottish Widows, to require the completion of its due diligence requirements. However, Scottish Widows could and should have handled things in a more customer focussed way, although it does not override the responsibility to carry out money laundering checks as required by the

legislation, I have no doubt that Mr S has suffered serious distress and inconvenience as a result of continued communication issues. Also, this was exacerbated by Scottish Widows not appreciating the due diligence compliance difficulties much earlier and offering an alternative approach, which they have now done.

48. Therefore, I uphold Mr S' complaint in respect of the serious distress and inconvenience caused but not in other respects concerning the requirement for Scottish Widows to comply with money laundering legislation.

### **Directions**

49. Within 21 days of the date of this Determination, Scottish Widows shall pay Mr S £1,000 for the serious distress and inconvenience he has suffered.



**Anthony Arter**

Pensions Ombudsman  
26 March 2019