DRN-4552421

The complaint

Ms W's complaint is about a mortgage endowment policy she took out with Scottish Widows Limited trading as Clerical Medical in 1998. She has complained that in 2023 Scottish Widows would not allow her to extend the term of the policy, despite documentation from an earlier date telling her that this was possible. Furthermore, she is unhappy that despite requests throughout the term of the policy, it only provided information about the fund it was invested in towards the end of the term.

What happened

Ms W took out the endowment policy in 1998 following being provided with advice by an independent financial adviser (IFA). It had a target value of £75,000 and a term of 25 years, with the maturity date in September 2023. The policy was invested in a balanced risk, managed fund.

The policy terms and conditions allowed all policies like Ms W's to be altered if the periodic policy reviews identified they were unlikely to reach their target. In 2008, 2013 and 2018 Scottish Widows reviewed Ms W's policy and sent her a letter setting out its conclusions. It concluded the policy was likely to mature with a shortfall. It gave Ms W some options to consider for dealing with the shortfall, one of which was to extend the term of the policy. The letters also confirmed the fund the policy was invested in.

In addition, Ms W's policy included 'Mortgage Options', which meant the policy could be altered outside of the periodic review process, subject to certain conditions being met. These included requirements about the policyholder's age at the time of alteration and at the end of the term, maintaining its qualifying status, evidencing the policy was still used as a mortgage repayment vehicle and the term extension being acceptable to the mortgage lender.

In addition to the periodic review letters, Scottish Widows also sent Ms W annual colour-coded letters that set out the risk of her policy not reaching its target value. In the latter years of the policy term these letters encouraged Ms W to take action to deal with the predicted shortfall on the policy. The letters set out generic options for her to consider to deal with the shortfall; one of which was to make changes to the policy if the terms and conditions allowed.

On 1 July 2016 Scottish Widows responded to a query from Ms W. It confirmed the type of policy she held, when it had started, when it was due to end, the benefits it provided and the premium payable each month. It also stated the policy invested in the Balanced Life fund. Ms W questioned the investment fund information and on 20 July 2016 Scottish Widows wrote to her again and provided her with a copy of the application form it had received for her policy. It confirmed that the fund selected was the Sapphire fund, which subsequently became the Balanced Life fund.

On 6 June 2023 Scottish Widows wrote to Ms W and confirmed that as the term ended on 24 September 2023, it was not able to extend the term of the policy beyond the expiry date. It did not explain why.

On 23 July 2023 Ms W complained. She was unhappy that it had refused to extend the term of the policy, thereby preventing the policy from achieving its target value. Ms W was concerned that no alternatives for dealing with the shortfall were put forward by Scottish Widows. In addition, she said she didn't know what fund the policy was invested in and had not been provided with performance data or alternative investment options to improve the policy's performance. Overall, Ms W was disappointed with the performance of the policy and believed it was well below that of other investment businesses.

Scottish Widows responded to the complaint in a final response letter of 12 July 2023. It explained that it no longer allowed new business in the form of mortgage endowment policies, and so it was not possible for the term to be extended. In addition, it also confirmed it was not able to offer financial advice, and so it couldn't help her with suggestions as to how to deal with the shortfall in the maturity value. Scottish Widows also provided Ms W with information on the fund the policy invested in and its performance since 1998. In relation to the shortfall, Scottish Widows explained that the financial markets had not performed over the term of the policy as had been expected when it was sold, and set out some of the significant factors in this. The complaint was not upheld.

Ms W didn't accept Scottish Widows' response. She informed it she was referring the complaint to this service and confirmed that she would not accept the maturity value until her complaint was resolved. Ms W referred the complaint to this Service. Following her doing so, Scottish Widows provided us with its file. It also highlighted that it had not responded to Ms W's last email to it, and so it wanted to offer her £75 for poor service

One of our Investigators considered the complaint. He didn't recommend that it be upheld. He was satisfied that Scottish Widows had kept Ms W up to date with the performance of her policy and had provided her with the services it could and should have. In relation to the performance of the policy, the Investigator highlighted that there were no guarantees about what the policy would be worth at maturity and it would be influenced by how the financial markets performed, as Scottish Widows had explained. As for the matter of the term extension she requested being turned down, he didn't think Scottish Widows had done anything wrong in declining her request. Finally, the Investigator told Ms W about the compensation payment Scottish Widows had offered.

Ms W didn't accept the Investigator's conclusions and asked that the complaint be referred to an Ombudsman. She said it was well documented that endowment policies were mis-sold. As such, Ms W considered the Investigator's consideration of the facts was lacking and allowed Scottish Widows to treat her unfairly. She reiterated that throughout Scottish Widows had failed to provide adequate information about the investment or what funds she could choose to switch to. In addition, Ms W said she had told Scottish Widows the adviser who recommended the policy had mis-sold it to her, and yet it had continued to pay commission throughout the life of the policy, latterly to a completely unrelated company. Ms W also stated that Scottish Widows had not contacted her to give her information about what it had done with the maturity value.

Scottish Widows accepted the Investigator's conclusions. When it was told about Ms W's comments, it confirmed that it could find no record of her having told it she thought the policy had been mis-sold. In light of her comments, it set up a new complaint to deal with this issue. It subsequently wrote to her and confirmed the policy had been sold by an independent financial adviser and it was not responsible for the sale.

As agreement could not be reached, it was decided the complaint should be referred to an Ombudsman. I subsequently had further information requested from both parties, the relevant parts of what were provided are detailed above, but neither party provided all of the information that was requested.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Before I consider the complaint points Ms W asked us to consider, I would comment on a point she raised following the Investigator's review. It makes no difference to the outcome of the complaint, but this may assist her understanding of the issue. She indicated that she is unhappy that commission has continued to be paid for the sale of the policy. This is called renewal commission – a small amount is paid each year the policy reaches its anniversary - and is something Scottish Widows agreed to pay at the time the policy was sold. This is a contractual obligation on Scottish Widows under the agreement it had with the IFA. When an IFA stops trading it is not unusual for its customers and associated commission 'book' to be transferred to another IFA – this is allowed. I note that Ms W has said that she told Scottish Widows the policy was mis-sold and so it should have stopped paying the renewal commission, but that would not change Scottish Widows' obligation to do so.

Ms W has complained that Scottish Widows didn't provide her with advice about her policy during the term to enable her to make a decision about what to do about the shortfall that occurred. I would firstly confirm that a financial business would not be expected to provide any such advice unsolicited, so she would have needed to request advice had she wanted it. Furthermore, even had she done so, Scottish Widows would not have been obliged to provide her with advice. Indeed, Scottish Widows as confirmed that it no longer offers advice and so it could not have given Ms W such advice even if she had requested it.

Ms W has complained that she was not provided with information about her policy in relation to the fund it was invested in and its performance so she could decide what to do with it. The policy was sold to Ms W by an IFA and it was that business that was responsible for ensuring she understood the policy, including knowing the fund it was invested in and the nature of that fund.

That said, if Ms W requested information about the policy and the fund it was invested in, we would usually consider Scottish Widows should have provided it. Ms W has said she repeatedly requested information throughout the term. The documentary evidence I have doesn't support that being the case. On the occasion she did ask for information in 2016, I am satisfied Scottish Widows responded as it should have.

Scottish Widows sent Ms W information about the performance of her policy on a regular basis and from 2004, on an annual basis. This confirmed the fund the policy was invested in and explained what the likelihood of the maturity value meeting the target was.
Scottish Widows also encouraged Ms W to take action to remedy any shortfall that was predicted, including setting out some potential options available to her. Unless Ms W requested further information or assistance (which I have already commented on), Scottish Widows wasn't required to do anything more.

Furthermore, she is unhappy that despite requests throughout the term of the policy, it only provided information about the fund it was invested in toward the end of the term. As for the matter of the policy's performance, it is unfortunate that the performance of policies such as Ms W's has been much lower than was expected when they were taken out in the 1990s. However, performance was never guaranteed, and a shortfall was always possible. While it was not thought at the time of the sale this would happen, that doesn't change the nature of the contract Ms W took out with Scottish Widows. What Scottish Widows was required to do was invest the premium she paid it each month, taking costs as and when required from the fund. As far as I can see, that is exactly what it did. Growth over the policy term turned the premiums into a maturity value, which was unfortunately less than hoped for, but that doesn't mean Scottish Widows did anything wrong.

I now turn to the matter of Scottish Widows refusing to extend the term of the policy. As I have detailed above, Ms W's policy originally gave her the option to alter her policy whenever she wanted to, as long as she met all of the conditions of doing so. Neither party has provided us with the detail of the request Ms W made in 2023. As such, it isn't possible for me to determine if she would ever have been able to do what she wanted to.

However, not complying with the conditions required for a term extension to be granted was not the reason Scottish Widows rejected Ms W's request. It explained in the final response letter that it no longer allowed 'new business' on its remaining mortgage endowment policies. When a life assurance company stops accepting new business to a type of policy, it allows existing policies to remain in force until their maturity, but it won't allow changes to be made to them. A term extension is an example of a change that would no longer be possible. A life assurance company is able to exercise its commercial judgment to effectively withdraw from a particular type of product and this Service would not look to interfere with such a decision. As such, I can only find that Scottish Widows did nothing wrong when it declined to allow Ms W to extend the term of her policy when she asked to.

Following the complaint being referred to this Service, Scottish Widows acknowledged that it had failed to respond to an email Ms W sent it. As such, it put forward an offer of £75 to compensate Ms W for any upset or inconvenience she suffered from this failure in service. Ms W didn't accept the offer, but having considered it, I think it fair and reasonable in the circumstances.

Scottish Widows offered Ms W £75 for poor service as it didn't respond to her last email to it. Having considered the nature of the mistake, I am satisfied that the offer made is appropriate in the circumstances.

I note that Ms W chose not to claim the maturity value of the policy until this complaint was resolved. In light of this decision resolving the complaint, Scottish Widows should now confirm to Ms W what she needs to do in order to claim the maturity value and if appropriate reissue any documentation needed for her to be able to do so.

My final decision

Scottish Widows Limited has already made an offer to pay Ms W £75 to settle the only upheld aspect of the complaint and I am satisfied this offer is fair in all the circumstances. As such, my final decision is that Scottish Widows Limited should pay £75 in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 16 May 2024.
Derry Baxter
Ombudsman