

## The complaint

Mr and Mrs W's complaint comes about from a mortgage endowment policy they have with Scottish Widows Limited trading as Clerical Medical. They believe that it was mis-sold and Scottish Widows failed to fulfil its obligations to them because:

- of the very poor performance of the investment;
- they were not made aware of the risk that they could get back less than they had paid in premiums;
- they were not made aware of proportion of the premiums that would be invested in stocks, shares, property and government stocks, or where the worldwide investment would be made;
- they were not made aware that the annual management charge would be taken, irrespective of how the fund was performing; and
- they were not made aware that in order to preserve the maturity guarantee to ensure their mortgage was repaid, there was a risk they would have to invest more than the amount of the mortgage.

## What happened

In 1998 Mr and Mrs W took out their endowment policy on an execution-only basis, which means they weren't provided with advice from Scottish Widows or any other financial business about the suitability of the policy for their needs and circumstances. This appears to be due to Mrs W being an employee of the business at the time.

The policy had a sum assured for life and critical illness cover, a target value, of £139,500 and a term of 25 years. The policy invested in the unitised with-profits fund. Mr and Mrs W chose the guaranteed maturity option. This meant that if the periodic reviews (starting 10 years after commencement) determined the policy was not on track to meet the target value, but Mr and Mrs W took action to put the policy back on track, Scottish Widows guaranteed to pay out the target value at maturity.

During the term of the policy Scottish Widows wrote to Mr and Mrs W on a regular basis, at least every two years, to tell them about the expected maturity value for the policy. These letters started in October 2000, when Scottish Widows told Mr and Mrs W it was possible that their policy wouldn't reach its target value. Letters sent from March 2006 onward told them there was a high risk of their policy not reaching its target value.

In addition to the risk letters being sent, Scottish Widows also sent the periodic reviews detailed above for the guaranteed maturity option. The first of these was sent in 2008, telling Mr and Mrs W the policy was predicted to fall short of its target maturity value. It asked them what, if anything, they wanted to do about the shortfall – they didn't respond. Scottish Widows wrote to them in March 2008 to confirm that as they had chosen not to make any changes to the policy, the guaranteed maturity option had been removed.

Mr and Mrs W were also sent annual statements for their policy. These confirmed the value of bonuses added to the policy and its total value.

In November 2022 Mr and Mrs W informed Scottish Widows that they had moved and asked it to update their address on its records. Scottish Widows asked Mr and Mrs W for some documentation to allow it to change their address. Before that documentation was received, Scottish Widows' systems sent out the maturity pack to their old address. However, it appears that Mr and Mrs W had some form of redirection in place, as they received the maturity pack.

Mr and Mrs W complained to Scottish Widows on 30 January 2023. The complaint was as detailed above, and they also asked for detailed information regarding the performance of the policy and the management of the fund. Unfortunately, Scottish Widows sent the complaint acknowledgement to Mr and Mrs W's old address.

The policy matured on 3 February 2023 with a value of slightly over £71,000.

On 25 April 2023 Scottish Widows wrote to Mr and Mrs W with details of the policy values for each year from 2004, including the amount and percentage of increase each year. It confirmed the amount of the management fee that was deducted each year and provided a report about the with-profits fund.

Scottish Widows responded to the complaint in a letter dated 9 May 2023. It apologised for using an incorrect address on correspondence about the policy and the initial complaint acknowledgement. £150 compensation was paid into Mr and Mrs W's bank account for the inconvenience they had been caused. However, in relation to the policy being mis-sold, Scottish Widows highlighted that it hadn't given them advice to take out the policy, rather it had simply given them information. As such, it said it was not responsible for whether Mr and Mrs W understood the policy. Scottish Widows also confirmed that as the complaint had taken some time to be responded to, it would add delay interest to the maturity value when Mr and Mrs W claimed it.

Mr and Mrs W responded to Scottish Widows to say that they thought it had misunderstood their complaint. They said their complaint didn't relate to the suitability of advice, but rather that Scottish Widows hadn't fulfilled its requirement to conduct its business with skill, care and diligence (in relation to the performance of the policy). They also said that it had not provided them with the information they needed and had not communicated to them in a way that was clear, fair and not misleading.

When Scottish Widows didn't respond further, Mr and Mrs W decided to refer the complaint to this Service. We informed Scottish Widows that the complaint had been referred to us. It acknowledged incorrectly addressing correspondence, and not replying to Mr and Mrs W letters following it sending its response to the complaint, represented poor service. As such, it offered, in addition to the compensation in the final response letter, to pay Mr and Mrs W another £350 compensation.

One of our Investigators forwarded, and endorsed, Scottish Widows revised offer to Mr and Mrs W. They didn't accept the offer. They said that without evidence from Scottish Widows that it conducted its business with due skill, care and diligence, in respect to the investments made, they didn't see how the offer could be accepted. Mr and Mrs W also said that with regard to information they were not made aware of, they didn't see how this could satisfy the test of needing to be clear, fair and not misleading.

The Investigator explained that she could only ask Scottish Widows to do something if it had made an error or did something wrong. She went on to confirm that as Mr and Mrs W didn't receive advice to take out their policy, it was their responsibility to ensure they understood the policy they were taking out, including where the policy was invested, the risk and any associated charges. Scottish Widows role was to keep Mr and Mrs W informed about their

policy once it went into force, which the Investigator was satisfied it did. In relation to the poor service Mr and Mrs W received in 2022 and 2023, the Investigator remained satisfied the offer of £500 in total made by Scottish Widows was fair in the circumstances.

Mr and Mrs W asked that the complaint be referred to an Ombudsman. They also reiterated their previous comments about the complaint points. In addition, they highlighted that they hadn't received the information they'd asked for in January 2023.

### **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.

As has already been pointed out, Scottish Widows didn't give Mr and Mrs W advice before they took out their endowment policy. This means that it was not responsible for ensuring that they understood the policy, including the charges, fund and risks associated with it. So if the standard documentation Scottish Widows gave them before they decided to take the policy didn't give them the information they needed, it was their responsibility to find that information, be that by asking Scottish Widows questions or by seeking advice from an appropriately qualified professional.

As for the information Scottish Widows provided Mr and Mrs W with following the policy going into force, I am satisfied that it was sufficient for them to understand how their policy was performing. If they required anything further, they could have asked for it, but it doesn't appear that they made any such requests until after the policy had matured. Mr and Mrs W were told from as early as 2000 that their policy might not reach its target value, and from 2006 they were told that there was a *high risk* it would not. At that time the shortfall was expected to be in the region of £42,000 at the middle growth rate used. That shortfall increased with each letter issued thereafter.

Scottish Widows encouraged Mr and Mrs W to take action to address the shortfall. I don't know if they took any action, but if they did, it didn't involve changes to the policy. This meant that the maturity guarantee was removed in 2008. The fact that Mr and Mrs W had selected that option at the time of their purchase would indicate they were aware that the returns from the policy were not otherwise guaranteed.

Mr and Mrs W have said that as Scottish Widows did not highlight to them various issues, it failed in its requirement to communicate in a clear, fair and not misleading manner. I am not persuaded that is the case. A life assurance company is expected to provide factual information about a policy at inception in the form of an illustration and other literature, and then specific information regarding the policy throughout the term. Scottish Widows provided such information, and I am satisfied it fulfilled its obligations to Mr and Mrs W, as required at different times. The fact that they now believe they should have been provided with more, non-standard, information, doesn't affect that Scottish Widows did what it needed to do. Mr and Mrs W always had the option to ask for more information had they wanted it.

That said, there are limits to what a life company can reasonably be required to provide. Mr and Mrs W set out a list of information they wanted with their complaint. While we would expect a life assurance company to respond to reasonable information requests, for example the bonuses that had been added to a policy or provision of fund reports, I don't consider Mr and Mrs W's request for a year-by-year breakdown of the performance of their individual policy or an ad-hoc analysis of the fund holdings and their successes or otherwise, would be considered reasonable. Such analyses would be time consuming and costly to produce and is not something we would expect to be provided to an individual consumer. Furthermore, details about the fund managers and the bonuses paid to those individuals is certainly not

something we would expect to be provided to consumers, especially due to data protection. Overall, while I know that Mr and Mrs W are now not satisfied with the information they received about their policy over time or following making their complaint, I don't think Scottish Widows needs to provide them with anything further at this time.

Mr and Mrs W have concluded that the shortfall on their policy means that Scottish Widows did not fulfil its obligation to invest their premiums and manage their policy with skill, care and diligence. Unfortunately for Mr and Mrs W the returns for such policies have been much lower through most of the term than when they took out their policy in 1998. This has led to a reduction in the growth of the fund and bonuses applied. However, the performance of the fund and policy were never guaranteed and there was absolutely no requirement for Scottish Widows to pay out the target value once Mr and Mrs W failed to take action and do what they needed to in order to maintain the maturity guarantee option. I do appreciate why Mr and Mrs W have raised these concerns and it is very unfortunate that performance fell so much compared to what was expected when the policy was taken out. However, that in itself isn't evidence of mismanagement or Scottish Widows acting incorrectly.

Mr and Mrs W and Scottish Widows entered into a contract when the policy commenced. They agreed to pay a monthly premium and Scottish Widows agreed to provide life cover and critical illness benefit during the term. It also agreed to provide an investment which, if anticipated growth rates were met, would reach a 'target' amount. This is where the problem has arisen. The hoped-for growth rates haven't been reached - far from it - but they were never guaranteed. A shortfall was always possible outside of the guaranteed maturity option. Of course, no-one thought that would happen, but it doesn't change the nature of the contract. Mr and Mrs W paid their premium each month and Scottish Widows had to invest the premium, 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 has turned the premiums paid into a maturity value which, unfortunately, was less than hoped for.

Mr and Mrs W were warned about the progress. It was made clear that the policy was not performing as expected and was unlikely to reach its target value. As I have said above, Mr and Mrs W were encouraged to take action to deal with this situation.

Scottish Widows did what it had to do. Being able to say that, looking back, different investment decisions would have been more profitable than the ones actually taken is a statement of the obvious. To make judgments like that, however, would be to use hindsight. I cannot use hindsight in making a decision. A very large number of decisions over a 25-year period relating to investments, costs and charges have been made by the investment managers at Scottish Widows. Those decisions were made in a regulated environment with layers of governance, independent scrutiny (such as by actuaries and the Regulator) and oversight. Some of the factors influencing returns were outside its control. Even if I were to try and 'drill down' to individual decisions it is very unlikely that I could point to an individual decision or set of decisions which were, without using hindsight, so manifestly bad or wrong that redress should be paid.

In summary, I am satisfied Scottish Widows kept Mr and Mrs W informed over the years, rather than the shortfall being a surprise when the policy came to mature in 2023. I would also comment that it's unlikely to have been in the interests of the fund managers to perform badly and I am sure Scottish Widows would have wanted the fund to do as well as possible. I haven't seen anything to persuade me that Scottish Widows mismanaged the fund or acted negligently. I am afraid the simple fact here is that Mr and Mrs W invested in an investment product which hasn't performed as well as hoped. I have seen no grounds for upholding this complaint on that basis.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs W to accept or reject my decision before 21 June 2024.

Derry Baxter  
**Ombudsman**