

The complaint

Mrs S is complaining about Scottish Widows Limited trading as Clerical Medical. She contacted them to ask them to cancel her joint life assurance policy and refund some premiums. She's upset that they haven't done that, and with the way they've handled her request.

What happened

Mrs S has held a joint life term assurance policy with her ex-husband, Mr S, since 2001. She's been paying the premiums from a bank account in just her name since 2009. She and her husband divorced soon after that. In 2015, Mrs S called Clerical Medical to ask what the direct debit was for, and when they told her, explained that she was no longer with Mr S. Clerical Medical said they would send her absolute assignment forms to remove Mr S from the policy if that's what she chose to do. But she didn't do anything about it at the time.

A few years later, in June 2021, Mrs S received a statement from Clerical Medical and she realised at that point that she was still paying for a product that she did not want. She wrote to Clerical Medical to ask how she might go about claiming back the premiums she'd paid, explaining that she suffers from chronic illnesses and mental health conditions.

Around six weeks later, and after a chaser from Mrs S, Clerical Medical replied to Mrs S, incorrectly addressing her as Mr S, saying only that she could cancel the policy but would need written confirmation from both policy holders. Mrs S was very unhappy with the response and this was escalated to a complaint.

Clerical Medical provided a written response to Mrs S's complaint in late October 2021. In it they offered £250 for the distress and inconvenience caused by their poor service. They also said they were limited in how much detail they could provide in their letters and strongly suggested Mrs S called them to discuss options going forward. Mrs S continued to write to Clerical Medical, asking them to communicate by letter as telephone calls were challenging for her, and expressing disappointment that Clerical Medical had still not been able to address her initial query.

In December 2021, Clerical Medical wrote to Mr and Mrs S, as policyholders, saying "*We refer to your recent request to stop payments to this policy. Your policy has now been put into a revivable lapse status...*" This letter is in a standard format with no accompanying explanation. They then wrote to Mrs S in January 2022 with a further complaint response. This time, they apologised for the service and delays and offered an additional £200 compensation. The letter said that Clerical Medical couldn't cancel the policy without written confirmation from both policyholders and that a refund of premiums couldn't be considered until the policy had been cancelled. But it did add that a compromise solution might be possible if Mrs S or someone she trusted could speak to Clerical Medical on the phone.

Mrs S brought her complaint to our service in January 2022. She was unhappy that she hadn't got anywhere with Clerical Medical and it was exacerbating her existing mental health conditions. Since she brought the complaint to us, she's received letters from Clerical Medical chasing her for unpaid premiums, which has added further to her stress and upset. Our investigator looked into things. He said we couldn't look into Clerical Medical's refusal to

cancel the policy and said we needed to dismiss that aspect of the complaint. He explained that for a joint policy we need to have consent from both policyholders to look into a complaint about the policy. He did look at the customer service aspect though – as this was about service rather than about the policy. His view was that Clerical Medical's offer of £450 was enough to compensate Mrs S for the upset their poor service had caused.

Mrs S was very upset with our investigator's view – particularly that he'd said we couldn't look into the main crux of her complaint. So the decision came to me. I issued a provisional decision on 31 October 2022. In that, I said that I thought we could look at the whole complaint even without Mr S's consent because in the circumstances the outcome of the complaint was unlikely to impact him. And I said that I thought Clerical Medical should have taken the decision to stop collecting Mrs S's payments earlier, in July 2021. I said that because I felt it was clear from that date that Mrs S didn't want the policy any more. I concluded by saying I thought Clerical Medical should refund Mrs S's premiums from July 2021, with 8% simple interest on each.

Mrs S accepted my provisional decision but Clerical Medical didn't. They said they weren't aware of all of the circumstances in June 2021. They added that Mrs S could have stopped paying at any time, and that they took an exceptional decision in December 2021. I reviewed the correspondence again and suggested that Clerical Medical refund premiums from October 2021 onwards, as this is when Mrs S first disclosed to Clerical Medical that it wouldn't be possible to involve her ex-husband in the matter. Clerical Medical accepted this suggestion. Mrs S wasn't happy with my revised position and felt that my suggested redress wasn't enough. I've considered all the points both parties have made and my final decision is set out below.

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 I'll explain below, our service can consider Mrs S's complaint in full. And I've decided Clerical Medical should make a small refund of premiums.

Can we look at the complaint?

Our investigator is right that we normally wouldn't consider a complaint about a joint policy unless we have both policyholders' consent. That's because what we decide could impact both policyholders – possibly to the detriment of the one who hasn't consented. Mrs S has explained to us why contacting Mr S is out of the question. And I can appreciate why this would be the case.

In this case, the policy would have paid a lump sum to Mr S if Mrs S died, and to Mrs S if Mr S died. So cancellation of the policy would have impacted Mr S. But the policy is now in a revivable lapse status – meaning that the only way either party can benefit from it is by paying all the unpaid premiums before its expiry in January 2023. Mrs S has made it clear she doesn't want to do this. And that she and Mr S aren't in contact. Further, Clerical Medical's letters to Mr S are sent to Mrs S's address – so it's highly unlikely he's aware of the policy. So any retrospective cancellation of the policy or refund of premiums would very likely have no impact on Mr S and we can therefore consider the complaint in full without his consent.

Cancellation / lapse of the policy

I can understand why Mrs S wants to cancel the policy – and why she'd like a refund of premiums. However, the policy was entered into jointly by Mr S and Mrs S and so it wouldn't

be appropriate for the business to cancel the policy without Mr S's permission. I can't see that Mrs S has disclosed the circumstances around the breakdown of her marriage to Clerical Medical so it wouldn't be fair to say they should take those circumstances into account.

After lengthy correspondence, Clerical Medical took the decision to lapse the policy in December 2021. They stopped collecting the premiums from Mrs S. I can see this decision was taken to try to act in Mrs S's interests – it had the same effect as cancellation. Unfortunately I'm not sure Clerical Medical communicated this very well to Mrs S. She didn't realise that her monthly payments had stopped, and was sent standard letters chasing her for unpaid premiums. I can understand this would have added to her stress and anxiety about the matter. I'm inclined to say the Clerical Medical took a sensible decision but the communication that accompanied it and followed it was poor – they should have explained to Mrs S what they had done and disabled the chaser letters or at least told Mrs S that she could ignore them. And I think Clerical Medical should have made this decision sooner and stopped taking payments earlier. It was clear from the Mrs S's first correspondence that she wanted to stop paying for and benefitting from the policy. But it wasn't clear until Mrs S's letter at the beginning of October 2021 that she wasn't in contact with Mr S. Up until that point Clerical Medical couldn't have been aware of the circumstances. So Clerical Medical should have taken the decision in early October 2021 and Mrs S has paid three months more premiums than she should have done.

Refund of premiums

Although Mrs S feels that she's had no benefit from the premiums she's been paying, she would have been entitled to a payment under the policy if Mr S had died. I can understand that she might not have wanted to benefit from his death, or might not even have been aware if he'd died. But Clerical Medical have provided the cover, so I can't tell them they should refund any premiums to Mrs S.

Clerical Medical did say they may be able to consider a refund if Mrs S or someone she trusts could phone them, but I can't see that such a conversation took place. Clerical Medical have acted fairly in this respect – they've tried to offer an alternative way of communicating to try to resolve matters.

Assignment of the policy

I've also thought about what happened in 2015 as Mrs S could have avoided many years of premiums if the policy had been cancelled in 2015. Or she could potentially have changed the policy to one that was more appropriate following the breakdown of her marriage. I can see Clerical Medical said they would send forms to Mrs S so that the policy could be amended. Mrs S says she never received those forms. However, Mrs S has also told me that she was already estranged from Mr S at that point and he wouldn't have signed anything. So although there's some dispute about whether or not those forms were sent, I'm satisfied it wouldn't have made any difference – Clerical Medical would have needed Mr S's agreement to make any changes to the policy and Mrs S tells us they wouldn't have got it.

Customer service

Clerical Medical have already apologised for their customer service and paid £450 to Mrs S to compensate her for the impact this has had on her. I'm satisfied this is a fair amount. I can see that Clerical Medical didn't respond to some of Mrs S's letters in a timely or helpful way. And I can understand that addressing a letter to Mr S would have been very upsetting for Mrs S. But the amount Clerical Medical have paid already is enough.

Summary

As I've explained above, I can't say that Clerical Medical should have cancelled Mrs S's policy or refunded any premiums paid before October 2021. But they should refund the premiums paid since then because they should have stopped taking Mrs S's payments at that point. And they should pay 8% per annum simple interest on those premiums. They don't need to do anything else to put things right – they've already paid Mrs S enough to compensate her for the impact of their poor service.

My final decision

I'm upholding Mrs S's complaint. Scottish Widows Limited trading as Clerical Medical need to refund the premiums Mrs S paid from October 2021 onwards, together with 8% per annum simple interest from the date of each premium payment to the settlement date.

If Scottish Widows Limited trading as Clerical Medical consider that they're required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mrs S how much they've taken off. They should also give Mrs S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 7 December 2022.

Clare King
Ombudsman