

The complaint

Mrs W is unhappy with the way Scottish Friendly Assurance Society Limited (SF) treated her, after she tried to claim benefits due to her from her husband's (Mr W) policy after his death.

What happened

Mrs W's husband purchased a retirement annuity contract (the pension policy) with a predecessor business of SF in 1982. He paid £25 every month until he very sadly passed away in October 2021. He was 65 at the time.

Mrs W contacted SF in November 2021 to begin the process of claiming benefits under the policy. SF told her she'd need to provide them with Letters of Administration, or a will naming her as beneficiary so they could start processing her request, which she did in April 2022.

However, due to a processing error, SF didn't undertake any work on Mrs W's claim until she contacted them in June 2022 seeking an update. Mrs W was unhappy with the way SF had treated her and the delays she'd experienced. She complained to SF at the beginning of July 2022. Very shortly after this, SF calculated how much Mrs W was due under the policy - £6,800.93 – and paid this to her on 5 July 2022, together with late payment interest of £91.82, plus a further £200 compensation for the distress and inconvenience (D&I) their mistakes had caused.

Mrs W questioned the amount paid to her, believing she was due the total fund value at the time of Mr W's death - £73,219.74. SF explained this was the current value of the fund, which would have been used to pay Mr W's pension when he reached his 70th birthday.

Unhappy with this, Mrs W brought her complaint to this service. SF then realised they hadn't properly calculated the amount they should have paid her - they'd paid an amount based on the sum assured, whereas they should have based it on a return of premiums paid which totalled £11,725. They offered to pay Mrs W the difference between £6,800.93 already paid and £11,725 and offered an additional £250 as compensation. Mrs W didn't accept this. She felt this was an insult, and they should pay her an amount much closer to the fund value of Mr W's policy at the time of his death. She referred to the yearly statements Mr W received, and the following text:

““Your...pension policy includes a guaranteed minimum pension plus death benefits which will pay a lump sum if you die before your chosen retirement date...”

Mrs W questioned whether SF had properly considered this when only offering to pay her £11,725. SF confirmed to our Investigator the reference to “*lump sum*” was to the lump sum return of premiums that would be due. They confirmed Mr W's policy was a ‘Self-Employed Retirement Plan’, and the terms of that plan were such that a return of premiums was the only outcome following Mr W's death.

Our Investigator issued his view in January 2023. He felt SF had (eventually) done what they were required to do under the terms of Mr W's policy. He was satisfied they'd offered Mrs W

the correct payment due. And he felt the amount of compensation they'd offered in respect of the distress they'd caused – £450 in total – was fair in the circumstances.

Mrs W was unhappy with this. She reiterated her distress at the way she'd been treated by SF. She was unhappy they'd only realised they hadn't paid her enough after we'd contacted them. She also pointed out Mr W could have chosen to take benefits at an earlier age, and been paid the full policy benefits due, but chose to "*stick with the plan out of loyalty*", and that it's "*diabolical*" this is all he (or she) now gets.

Mrs W also referred again to the text within the yearly statements (as above), repeating her belief she should be entitled to a return of premiums *plus* a further lump sum in respect of death benefits. Finally, Mrs W thought the total D&I offered of £450 was unreasonable and doesn't reflect the disruption and frustration she'd experienced. She asked that her complaint is reconsidered by an Ombudsman, so it's been passed to me to review.

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.

First of all, I want to extend my condolences to Mrs W for the very sad loss of her husband.

I also want to take this opportunity to explain how this Service generally approaches complaints that are brought to us. We will consider the evidence of what's happened, and if we think a business hasn't acted fairly, or complied with its relevant terms and conditions, we'll ask that business to take steps to correct their omission or mistake – and put the consumer back in the position they would have been in, had the mistake not occurred.

With that in mind, I need to consider two fundamental issues here. Firstly, did SF do what they should have done, under the terms of Mr W's policy. And, secondly, have they treated Mrs W fairly in how they've dealt with her. I'll consider issues relating to Mr W's policy first.

I've looked at the application form, completed and signed by Mr W on 29 July 1982. It asks him to choose from two options regarding what his plan would pay upon his death. It asks:

"Return on death: The value of the fund [or] The full amount of the contributions paid"

Mr W deletes the first option. The form then asks, at question 3:

"If you should die before your pension commences do you want the policy to provide for the death benefit to be applied to secure a pension for your spouse or other dependant?"

Mr W answered 'No' to this question. He also clearly stated that he wanted the policy to run until he reached his 70th birthday – the 'vesting date'. So, I think it's reasonably clear what his intentions were at the time he took out the policy.

I've looked too at the 'personal illustration' created for Mr W at inception which explains how his benefits at retirement would be calculated. It says that should he die before reaching retirement, the benefit payable would be "*The total contributions paid to date*".

Turning to the policy documents, the 'Second Schedule, Special Provisions' section, says:

"(2) If the annuitant (Mr W) shall die prior to the Vesting date (his 70th birthday) or earlier Selected Vesting Date (as defined in Special Provision (4) hereof) all premiums paid to the Society in respect of this Policy will be returned."

(3)The annuitant may give notice in writing...that in the event of [his death] prior to the Vesting Date...the Society shall pay to the surviving spouse [or other beneficiary]...in lieu of the sum specified in ...(2) above, an annuity during the remainder of [the spouse's life]..."

So, in simple terms, I think the above shows that when Mr W applied for his policy, he wanted it to provide a pension when he reached 70. And, if he died before this, his beneficiary would only be entitled to a return of the premiums he'd paid. It was possible for Mr W to amend these choices, by notifying SF in writing, but there's no evidence that he did this. So, according to the terms of Mr W's policy, all SF had to do when becoming aware of Mr W's death was to refund the premiums that had been paid up until that date.

I appreciate the points Mrs W has made about the language used within the various annual statements that were sent to Mr W. However, I think it's reasonable to say these statements were designed to advise Mr W (and other similar policyholders) what the pension was worth at that point in time, and its likely eventual worth when Mr W started drawing it (when he reached his 'vesting age' of 70 years old). They contained details of his policy, of bonuses that were to be added each year (if any), the fund value, and the guaranteed annual pension the policy would pay once taken at age 70.

So, when these annual statements said "*Your...pension policy includes...etc*" (as above), it meant Mr W's policy provided a guaranteed basic pension – assuming he reached his vesting age – of the amount specified. And the 'fund value' figure included in each statement (in December 2020, the last statement Mr W received, this was £73,219.74) represented what Mr W's fund was worth at the date of the statement – made up of premium contributions, investment growth and annual bonuses added, which would help fund that lifetime guaranteed pension - it wasn't the total amount that Mr W had paid into the policy. It was also the approximate amount that Mr W could transfer to another pension provider if he wished. The "*death benefits*" referenced are separate to that – they refer to the fact SF will pay a death benefit lump sum, which the policy terms say will be the total amount of premiums paid to date.

I appreciate the statements don't clearly state how those death benefits will be calculated, and the confusion this caused Mrs W. However, this doesn't mean I can fairly ask SF to pay Mrs W more than the policy terms require them to pay here. The terms of Mr W's policy, and his choices made at application, are clear that the only thing SF needed to do upon his passing (before his chosen vesting age) was to refund his premiums to Mrs W. This is what SF have offered. So I won't be asking them to increase this offer.

I'll now comment on the way SF dealt with Mrs W. SF admit they made mistakes in the way they dealt with Mrs W's claim. They failed to allocate the claim to a 'workstream' after she'd sent them the letters of administration, meaning she waited longer to receive the death benefit than she should have. And even then, SF made a further mistake despite Mrs W challenging their initial claim payment. It wasn't until four months later they realised they hadn't calculated the death benefit properly and offered what I've concluded was the correct sum. All of this was happening after Mrs W had suffered the loss of her husband of many decades - a time of considerable loss and upset.

However, putting a value on distress is not an exact science, and our awards for D&I are not designed to 'punish' a business where we think they've caused a customer distress. There are guidelines on our awards limits on our website. And having considered the facts here, I think SF's total D&I offer of £450, of which only £200 has been paid so far, is broadly in line with what I'd expect it to pay in these circumstances, so I won't be asking it to increase this.

Putting things right

SF has already paid Mrs W some of the £11,725 death benefit properly due under Mr W's policy. It paid £6,800.93, plus interest for late payment, on 5 July 2022. SF has confirmed the interest was calculated from 20 April 2022 – the date they received a copy of the Letter of Administration – until the date the first payment was made. Given SF needed to see this before processing the claim, I think this is a fair 'start' date to use for interest calculation purposes.

This means £4,924.07 remains to be paid, which SF have agreed to do. SF have also agreed to pay further late payment interest on this sum – which I think should be calculated from 20 April 2022 until such time that payment is made, at a rate of 8% simple per year.

And SF must also pay Mrs W the further £250 D&I it previously offered.

My final decision

My decision is that Scottish Friendly Assurance Society Limited should do the following:

- Pay Mrs W £4,924.07, plus interest as set out above, within 28 days of her acceptance of this decision
- Pay Mrs W a further £250 compensation for D&I.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 11 April 2023.

Mark Evans
Ombudsman