

## **The complaint**

Mr and Mrs P complained that Scottish Widows Limited trading as Clerical Medical (SW) had failed to pay compensation Mr and Mrs P say they were offered by a manager at SW, following delays encashing units in their investment held with SW. They were also concerned that when SW dealt with the encashment, it made mistakes which it hadn't corrected.

Mr and Mrs P asked for the compensation they say SW said it would pay them, plus additional redress to reflect all the trouble and upset they've been caused and they want SW to resolve outstanding issues.

## **What happened**

Mr and Mrs P were invested through SW in the Maximum Investment Plan ('MIP'), a unit-linked fund in their joint names. When the MIP started it had 20 segments. The annual premium was £125 per segment, equal to £2,500 per year for the whole MIP.

In 2014, Mr and Mrs P had encashed 3 segments, leaving 17 invested. This reduced the total premium to £2,125.

Mr and Mrs P applied to SW for a partial encashment of units in their plan on 11 October 2021 so they could assist a family member to buy a house. They wanted to encash 6 segments, leaving 11 invested. They explained to SW that completion was arranged for 11 November 2021 and that they would need to have the money by 4 November 2021 in order to allow time for it to be transferred and made available for the purchase.

Mr and Mrs P were told by SW that ongoing IT issues meant encashments were averaging 105 working days. When they expressed their concern at this timescale, SW upheld their complaint and said it was paying them £100 for the distress and inconvenience caused.

Mr and Mrs P say that because they were told they might not be able to obtain the partial encashment in time for the house purchase to complete, they looked at other options. This led them to sell £40,000 worth of shares in an ISA, which they left in the ISA as cash in the event that they needed this money for the 11 November 2021 deadline.

On 1 November 2021, Mr P spoke to a representative of SW to reiterate the urgency of the situation and his concerns about the delay. He says he was told that special approval would be requested from senior management to get the money released at an earlier stage than normal in order to be as close to this timescale as possible.

Mr and Mrs P said SW agreed to arrange an advance payment of £44,000 against the policy to protect the house purchase but this failed to arrive on time.

Mr P took out a personal loan on 9 November 2021 to enable the house purchase to complete. He says that because he received this money so close to the deadline for completion, he incurred £30 in CHAPS transfer fees sending this on to the purchaser's solicitor.

On 11 November 2021, Mr and Mrs P received a payment of £44,000 from SW which they used to repay the loan they had arranged to enable completion to happen on the due date.

Mr P has said on 12 November 2021, the complaints manager from SW called to apologise and made an offer to encash the 6 segments at their highest unit price in the period from 20 October 2021 to 11 November 2021, plus pay interest on the cash from 2 November 2021 to 11 November 2021. Mr and Mrs P say this was never done.

They have also complained that £750 of the annual premium they paid in November 2021 should not have been taken by SW, because this related to the 6 surrendered segments.

When Mr and Mrs P still hadn't received the balance of their encashment they chased this up and a payment of £650.97 was made to them on 17 March 2022. Mr P says he told SW that this figure was incorrect as it was too low and that the complaints manager promised to review this and get back to him. Mr and Mrs P say that didn't happen and they are still awaiting a resolution.

Although SW didn't respond to our information requests our investigator felt that she had seen enough to uphold Mr and Mrs P's complaint. She issued her view to the parties on 2 August 2022 and recommended that SW needed to do what Mr and Mrs P said it had offered to do to put things right. She also recommended that SW should pay total compensation of £300 for the distress and inconvenience it had caused.

Following discussions with Mr and Mrs P, it's my understanding that they are happy with this proposed resolution so far as it goes.

For its part, on 25 August 2022, SW acknowledged safe receipt of the investigator's assessment. It told us it was still looking into the complaint and '*...trying to get everything sorted...*' but that this hadn't happened yet. SW said it would arrange to update us the following week and that it had escalated the matter again.

When our investigator chased SW for its further response, SW replied on 16 September 2022 to confirm it had received the investigator's request for its business file but that it had '*...received a further part to the complaint on 10 November 2021 which we are still trying to resolve with the customer directly.*'

SW asked our investigator to allow until 30 September 2022 for it to attempt to resolve matters and said that if we told them that Mr and Mrs P still wanted this service to look into matters, it would provide its file.

Despite our investigator's further efforts to engage with SW, this was the last communication received from SW.

Mr and Mrs P had received a communication from SW on 28 March 2022, shortly before they brought their complaint to this service, which advised: '*...I am currently reviewing the figures you quoted and will be in contact with you once I have concluded my investigation. I apologise for the length of time this has taken and will get back to you as soon as I have an adequate update.*'

However, as things stood, in addition to not having had any update since this email, Mr and Mrs P also had outstanding concerns which include the way SW has managed the contributions to the plan following the partial encashment as well as unanswered questions about direct debit issues and the current value of the policy.

The complaint came to me to decide. I issued a provisional decision.

### **What I said in my provisional decision**

Here are some of the main things I said.

'I sympathise with Mr and Mrs P – I can completely understand that what's happened has been frustrating for them.

I would like to start by explaining my remit here. I can't award redress for any complaint where the financial business hasn't first been given a chance to put things right, within the timescales that businesses are given to do this. I appreciate that Mr and Mrs P have said they are trying to avoid having to raise a second complaint. But, if they feel they have further cause for complaint that goes beyond the scope of the complaint they originally brought to us, then they should first tell SW what those concerns are, so it has an opportunity to respond. If they still feel unhappy after that, they may be able to bring a new complaint to this service.

To clarify this further, since their initial complaint to this service, Mr and Mrs P have also expressed concerns about the premium due to be collected in November 2022. They told SW that this should only be £1,375, rather than the £2,125 collected in November 2021 (which they say was itself £750 too high, as it did not reflect that 6 segments had been encashed). Mr and Mrs P say that in fact, SW took no premium in November 2022.

They also understand that SW has written to them to say that it cannot vary the premium amount because it will affect the MIP's tax qualifying status. And they have not received updated statements showing the MIP's value. Although I appreciate these issues are causing Mr and Mrs P further concern, because they did not form part of their original complaint, I will not be considering them in this decision. As explained above, Mr and Mrs P will need to address these concerns in the first instance directly to SW.

A key element of the complaint Mr and Mrs P made to us is that SW has failed to pay the redress it had offered for the problems they'd had trying to obtain encashed funds by the deadline date.

I have looked at the available evidence and information provided and thought about all the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened. This means I've largely had to base my findings on what Mr and Mrs P have told me as SW has not engaged with us. In this situation, I cannot reasonably do otherwise.

I haven't seen anything to suggest that what Mr and Mrs P have told us isn't likely to be correct. They have provided me with emails which bear out their version of events and support what they've said about what they were told. This is reflected in the investigator's view letter which I am satisfied SW has seen and had ample opportunity to comment on. SW has said nothing that refutes or contradicts the assumptions our investigator based her conclusions on. So I think it's reasonable for me to assume that it doesn't dispute her conclusions or disagree with the redress she proposed.

This leads me to make the following findings:

- 105 days to partially encash Mr and Mrs P's investment was an unreasonable timescale – I say this taking into account that SW upheld Mr and Mrs P's complaint this was unacceptable and paid them £100 compensation for this. But in any event, I do not consider it was reasonable for SW to say the encashment would take as long as 105 days. I can see no good cause for what would appear to be a straightforward

transaction to take that length of time. SW has cited IT issues, but Mr and Mrs P quite reasonably in my view expected the process to be much quicker than the timescale quoted to them.

- I've no good reason to think that Mr P isn't correct in saying that the SW representative he spoke to offered to base policy encashment value on the highest unit price between 20 October 2021 and the actual date of final encashment and pay interest on the loan amount (£44,000) Mr P borrowed when the encashment proceeds weren't available in time for completion. Mr P has a clear recollection of what was discussed and notes of what happened. I also think this would be a fair way for SW to put things right – the encashment value most likely varied day to day. And whilst the value on any given day might have resulted in a different encashment value, it seems reasonable to me that Mr and Mrs P should have the benefit of the best possible price they could have achieved as it is possible they could have achieved this had SW encashed the policy sooner. I've also seen evidence of the loan Mr P arranged – and that he used the £44,000 from SW to clear this.

- The £100 payment to Mr and Mrs P shows intention on SW's part to acknowledge their distress and the inconvenience they faced when they learned of the 105 days' likely timescale for processing their encashment request. But I don't believe that this payment is sufficient to fairly reflect the trouble and upset that followed after this. Mr and Mrs P were left in the position of having to continue trying to arrange funds in time to make the completion date – which was beyond their control. Ultimately, they had to arrange a personal loan with a third party for this purpose. And SW's poor handling of Mr and Mrs P's legitimate request for a partial encashment caused them concern that they might be the cause of the house purchase failing.

In addition, after Mr and Mrs P received the £44,000 advance in November 2021, they then had to wait until March 2022 before they received what was said by SW to be the surplus encashment amount of £650.97 for the 6 surrendered segments. Along with this delay, SW took an annual premium in November 2021 that was £750 higher than Mr and Mrs P expected, because it did not take into account that 6 segments had been encashed. It's my view that SW has caused Mr and Mrs P significant unnecessary distress as a result of its failure to respond to their reasonable enquiries about the MIP, and through its administrative failings. In light of this, my view is that it would be reasonable to require SW to pay them £500 (including the £100 already offered) under this heading.

- Mr and Mrs P say that they encashed £40,000 of shares held in an ISA as a possible means to cover the house purchase because of concerns that SW would not carry out the partial encashment by the required deadline. When they made their complaint, they asked that SW compensate them for the costs they incurred selling and then buying back these shares. In response to the investigator's assessment, Mr and Mrs P suggested that they might no longer be pursuing this aspect of their complaint.

Notwithstanding that, on balance my view is that SW is not responsible for the decision made to sell these shares. SW had indicated that it would try and provide Mr and Mrs P with the MIP proceeds by the deadline required, and in fact they later obtained the money through a personal loan. Overall, my view is that it would not be reasonable to require SW to cover any costs relating to the ISA share sale and buy back, because at the date the shares were sold, there was still the possibility that Mr and Mrs P would be able to obtain the required funds from the MIP.

- Mr and Mrs P say that they incurred £30 in CHAPS transfer fees in order to achieve the house completion deadline, and this was exacerbated by SW's encashment delays. In light of Mr and Mrs P's testimony, which I consider to be entirely plausible, my view is that SW should be required to pay redress to cover this sum.

- Mr and Mrs P have identified that following the encashment of 6 segments, the annual premium paid for the MIP in November 2021 should have reduced by £750 (as the premium under each segment is £125). SW has not given an explanation about the premium due in November 2021. However, Mr and Mrs P's reasoning would appear to be correct, in that I would have expected the premium to decrease once the 6 segments were encashed.

That said, SW sent a 'final' encashment cheque to Mr and Mrs P on 17 March 2022 for £650.97. This indicates that the actual encashment of the 6 segments occurred sometime in early March. If so, that was some time after the November 2021 premium was payable, and therefore premiums for the 6 segments would have been due.

If this is correct, the number of units held under the MIP will reflect the payment of the £750 for the 6 (later surrendered) segments. Consequently, Mr and Mrs P will have received a benefit for the £750, as it will have purchased units. At a later date, which as I have said was probably in early March 2022, 6 segments were encashed. Because it would appear the £750 was invested, I do not currently intend to award redress in relation to this sum.

I would add here that the confusion around this £750 payment has been caused by SW's failure to provide Mr and Mrs P (and indeed this service) with any meaningful information about the MIP following the partial encashment request. The difficulties that have been caused to Mr and Mrs P are reflected in the compensation I propose to award for the distress and inconvenience they have suffered.

So I think it is fair and reasonable for me to tell SW it needs to put things right as set out below.'

### **What the parties said in response to my provisional decision**

Both parties have been in touch to confirm they agree with what I've said in my provisional decision.

### **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.

I'd like to thank both parties for their responses to my provisional decision. Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

## Putting things right

SW should take the following steps:

- Pay Mr and Mrs P an amount based on policy encashment of 6 segments at the highest unit price between 20 October 2021 and the actual date of final encashment. SW should take into account the units purchased by the November 2021 premium that was paid of £2,125 ie including the £750 paid in respect of the 6 later surrendered segments.

Under this part of the redress, SW is able to take into account the £44,000 advance and £650.97 it has already paid in respect of the partial encashment.

To any amount due should be added 8% simple interest\* from the date the segments were encashed to the date of my decision.

- Pay 8% simple interest\* on the £44,000 advance from 2 November to 11 November 2021.
- Pay Mr and Mrs P £500 overall for the distress and inconvenience it caused them (so if SW has already paid them £100 as it said it would, then it should pay a further £400).
- Additionally, SW should also pay Mr and Mrs P £30 to cover the CHAPS transfer fees they incurred in relation to the house purchase.
- SW must provide Mr and Mrs P with full and clear calculations showing how it has arrived at the figures shown above.
- SW should also pay 8% simple interest\* per year on this award if it fails to make payment to Mr and Mrs P within 28 days of the business being notified of acceptance of this decision.

\*Income tax may be payable on any interest awarded. SW must give Mr and Mrs P a certificate showing how much tax it's taken off if they ask for one.

## My final decision

I uphold Mr and Mrs P's complaint and Scottish Widows Limited trading as Clerical Medical should take the steps set out above to put things right. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 26 April 2023.

Susan Webb  
**Ombudsman**