DRN-4376587

The complaint

Mr S complains about Scottish Widows Limited's (Scottish Widows) failure to resolve issues that arose upon encashment of his Investor Plan 10 policy.

What happened

In 2010, Scottish Widows wrote to Mr S explaining that due to an error on their part, his Investor Plan 10 policy could only continue on a non-qualifying basis rather than on the qualifying basis it was set up as. Scottish Widows confirmed they'd be eligible to pay any resulting tax charge at any time a claim was made.

Mr S encashed the policy upon maturity in 2019 and because the policy was non-qualifying, he was liable to pay tax on his investment gain of £59,726.29 to HM Revenue & Customs (HMRC). Despite trying to resolve the issue with both Scottish Widows and HMRC prior to any amount being due, in January 2021 Mr S was required to pay HMRC £16,314.94 in addition to forfeiting an overpayment that would have been due of £755.25.

Mr S complained to Scottish Widows. They upheld the complaint, issuing a cheque to Mr S for £1,150 by way of compensating him for both his time and effort spent, and for the delay in them replying to his complaint.

Scottish Widows also acknowledged their previous error in 2010 and confirmed they'd rectify the tax issue, but first would require an official request and breakdown from HMRC. Unable to obtain anything further from HMRC than what he already held, and with the matter still unresolved, Mr S referred his complaint to the Financial Ombudsman Service.

Lengthy communication between our Investigator and both Mr S and Scottish Widows then took place before Scottish Widows reimbursed Mr S £17,070.20 in June 2022. In addition, in August 2022, Scottish Widows sent Mr S a payment of £1,033.32 consisting of £733.32 interest calculated at 8% simple from October 2021 until the date of reimbursement in June 2022 and a further £300 compensation.

Mr S disputed the date Scottish Widows had used to calculate the interest he was due explaining he'd been required to pay HMRC in January 2021, not October of that year. Mr S also said that due to the nature of the qualifying product he should have held, all interest should be paid gross and that Scottish Widows offer of a further £300 compensation was derisory.

Scottish Widows agreed to arrange a further interest payment of £790.98 to cover the period Mr S was without his funds between paying HMRC in January 2021 and the original October 2021 date they'd used, but on both amounts they remained firm that they would be paid net of tax.

Mr S remained dissatisfied however our Investigator agreed Scottish Widows had calculated interest correctly and that it was right to be paid net. She also said she was satisfied that the amount of compensation both paid and offered, totalling £1,450, was fair so she wouldn't be asking them to pay more.

Mr S remained unhappy with both the compensation offered and interest being paid net. In addition, Mr S said he'd never received the £1,033.32 payment Scottish Widows say was sent in August 2022, nor had they paid him interest on the £755.25 overpayment he would've received had Scottish Widows error have not occurred.

Following further discussions with our Investigator, Scottish Widows agreed to pay an additional £76.54 in respect of interest at 8% to compensate Mr S for the time he was without the £755.25 – however the figure paid would be net of tax. Scottish Widows also provided evidence of them sending the payment for £1,033.32 in August 2022, however because Mr S provided evidence of its non-receipt, they agreed to send the payment again.

Our Investigator said she felt Scottish Widows offer to put things right was fair and she remained of the opinion they didn't need to pay gross interest, nor did they have to pay further compensation. Mr S disagreed saying he remains of the opinion interest paid to him should be paid gross and said the initial £1,000 compensation paid was for work done and is water under the bridge. He therefore still considers the further £300 offered to be paltry. As no resolution could be reached, the complaint has been passed to me to decide.

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.

Having done so, I agree with the opinion of our investigator about Mr S' complaint for the following reasons.

But first, both parties have provided a lot of information about this complaint. I'm aware I've summarised this complaint in far less detail than has been provided, and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this. This reflects the nature of our service as an informal alternative to the courts.

If there's something I've not mentioned, or if I don't comment on any specific point, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every detail to be able to reach what I think is the right outcome reasonable in the circumstances of this complaint. This is because whilst I consider all the detail, I also need to think about things overall and as a whole and I've focused on what I consider to be the outstanding issues of contention.

I think it's also relevant and important to emphasise that the Financial Ombudsman Service isn't the industry regulator. That means we don't set the processes a business puts in place, enforce changes upon them or set out to punish them. My role is instead to consider individual disputes and if I don't think the business acted appropriately, to look at everything that has gone wrong as a whole and decide a fair and reasonable outcome.

Its clear Mr S hasn't received the service he was entitled to expect throughout dealing with Scottish Widows to resolve this matter.

As a result of Scottish Widows error in 2010, on encashment of his policy Mr S was required to make two payments of £8,157.47 to HMRC in January 2021, in addition to forfeiting an overpayment he would've been due back of £755.25.

Scottish Widows reimbursed this amount to Mr S in June 2022 putting him back into the position he would've been in had his policy remained qualifying and no tax on his gain had been due. I won't comment on these payments further.

But Mr S was without this money for some time and its only right Scottish Widows compensate him for being deprived of those funds and for the considerable time and effort he's put in to rectify the matter. It's these issues that remain outstanding. I consider the crux of this complaint to consist of two key points. It's these I'll focus on.

Interest for being deprived of funds

Scottish Widows have calculated interest at 8% simple by way of compensating Mr S for the time he was without his funds. I'm satisfied the dates used (those being 14 January 2021 and 21 January 2021 respectively for the two £8,157.47 payments Mr S was required to make to HMRC, and 21 November 2020 regarding the forfeited overpayment, all until 20 June 2022 – the date the funds were reimbursed) are correct. These are the periods of time during which Mr S was without those funds. I won't be asking Scottish Widows to amend those dates.

I understand Mr S feels the interest payments made to him should be gross and he has referenced a previous case where this was the case. But I am considering what's fair and reasonable in the specific circumstances of this case.

Upon encashment of his Investor Plan 10 policy, Mr S should've received £59,726.29 had the policy remained qualifying as it was when it was set up. The payment of £17,070.20 made to Mr S in June 2022 put him back in the position he would've been in had he not been liable to pay tax, and at this point the funds were return to him and available for him to do with as he pleased.

But as there was a period of time where those funds weren't available Mr S lost the opportunity to utilise them earlier. I can't be sure what Mr S would've done with those funds or what interest, if any, he might've earned from it. So, in cases like this we ask a business to calculate interest at 8% - which is what Scottish Widows have done.

But this payment isn't redress, nor is it part of his original investment gain. That policy ended when the encashment was made in 2019. The interest is compensation for loss of opportunity. So, it isn't for me to tell Scottish Widows they must pay interest gross to Mr S and if Scottish Widows considers that they're required by HMRC to take off income tax from any interest due to him they are entitled to do this. Should Mr S not be liable to pay income tax he'd be able to reclaim the tax from HMRC.

Scottish Widows have now made a second attempt to pay Mr S a payment of £1033.32 on 31 May 2023. This payment consists of £733.32 interest and £300 compensation.

Scottish Widows have agreed to pay further interest payments of £790.98 and £76.54. On payment of these further amounts, I'm satisfied they've put Mr S back in the position I'd expect them to, and I don't require them to do anything further here.

Compensation

Next, I've considered the delays caused by Scottish Widows when resolving this issue and the distress and inconvenience caused to Mr S, including the time and effort he's had to spend on the matter.

I'm in no doubt Mr S has had to spend a lot of time and effort to ensure this matter reaches a resolution. Scottish Widows were upfront about their error in 2010 so the actual issue itself arising in 2019 wouldn't have come as a shock. That said, it's clear Scottish Widows haven't dealt with putting things right well, which I understand will have caused some distress.

But I’ve also considered the total amount of compensation, £1,450, paid already by Scottish Widows, which isn’t an insignificant amount.

I understand Mr S considers Scottish Widows original payment of £1,150 to be water under the bridge. But when considering a fair and reasonable payment for distress and inconvenience I’ve looked at everything that’s happened as a whole. And overall, I’m satisfied £1,450 is fair and reasonable in the circumstances of this case. I won’t be asking Scottish Widows to pay anything more.

Summary

In summary, I’m satisfied Scottish Widows have acted fairly and reasonably to put Mr S back into the position he would’ve been in had their error in 2010 not have occurred. I’m also satisfied their overall offer to compensate Mr S for both being deprived of his funds and for the distress and inconvenience caused to be fair.

I don’t require Scottish Widows to increase either the interest payments or compensation offered to Mr S. Nor do I require them to pay interest to Mr S gross.

Putting things right

For the reasons I’ve explained above, to resolve this complaint, Scottish Widows should pay Mr S the two outstanding interest payments of £790.98 and £76.54.

As Scottish Widows considers that they’re required by HMRC to take off income tax from any interest paid or due to Mr S, they should tell him how much they’ve taken off for all three interest payments. They should also give Mr S a certificate showing this if he asks for one, so he can reclaim the tax from HMRC if appropriate.

My final decision

I uphold this complaint and require Scottish Widows Limited to put things right by doing what I’ve set out above – in line with what they’ve already offered to do.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 28 October 2023.

Sean Pyke-Milne
Ombudsman