

The complaint

Mr L complains that Scottish Friendly Assurance Society Limited ('SFAS') gave him incorrect information about the surrender value of his investment bond. He says that he received c£27,000 more than he was expecting and as a consequence, this meant that he had to pay additional income tax and a larger student loan repayment.

Mr L would now like SFAS to recompense him for the additional income tax and student loan repayment that he says he's incurred because of the incorrect information he received.

What happened

On 7 September 2023, Mr L telephoned SFAS to understand how much money was in his investment bond. SFAS's helpline explained that the total value of the bond, including bonuses amounted to £46,800. As Mr L was planning to utilise the funds towards a house purchase, he opted to surrender the investment bond in full on 13 September 2023.

SFAS then processed the surrender on 17 October 2023 and the encashment proceeds then followed shortly after, but rather than crediting his account with £46,800, SFAS sent surrender monies totalling £73,772.

As a result of the unexpected additional monies, Mr L then discovered the gain from those extra funds would likely push his income into the higher rate tax bracket. Mr L also became aware that he would have to pay £2,430 in extra student loan repayments because of the further income that he'd received.

Shortly afterwards, Mr L decided to formally complain to SFAS. In summary, he said that he was unhappy he'd been provided with incorrect information. He went on to say that as a result of the misinformation, he'd become liable for higher rate income tax of around £5,000 and had to make an additional student loan repayment.

After reviewing Mr L's complaint, SFAS conceded that they had misinformed him about the surrender proceeds of his investment bond. They also said, in summary, that they were paying him £300 for the inconvenience they'd caused.

Mr L was unhappy with SFAS's response, so he referred his complaint to this service. In summary, he said that SFAS hadn't gone far enough to put things right for him; Mr L said that he wanted SFAS to cover the £5,000 income tax bill and £2,430 student loan repayment.

The complaint was then considered by one of our Investigators. He concluded that the offer that SFAS had made to Mr L was fair and reasonable because since referring his case to this service, Mr L had submitted his draft tax return and that showed he had only been liable to an additional £100 in tax, rather than the £5,000 that he first thought. Mr L also later clarified that the additional student loan repayment that he was required to make was £2,279, rather than £2,430. Our Investigator felt that as the student loan had to be repaid at

some point in the future anyway, by making the additional repayment now, Mr L would save interest.

Mr L, however, disagreed with our Investigator's findings. In summary, he said:

- Had he known the policy was worth £73,772, he may have only taken as little as £30,000 to avoid all of the taxation and any student loan costs. The assessment he made when deciding to take out the £46,800 was based on the tax at that time and leaving £16,800 wasn't worth his while but leaving £43,000 could have been.
- The timing of when his student loan is repaid is a matter for him to determine and shouldn't be driven by mistakes from a financial firm; he also said that his student loan repayments stop after 30 years and there might have been a remaining balance that would've been wiped clean at that point had SFAS not made the error.
- The £300 offered by SFAS fails to recognise that their error has deprived him of a substantial amount of cash that, he had not been forced to make a student loan repayment, he could have utilised for other goals.
- "The service provided by SFAS was appalling", he says, and that they provided wrong information and caused unnecessary delays costing him time and also money.

Our Investigator was not persuaded to change his view as he didn't believe Mr L had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr L then asked the Investigator to pass the case to an Ombudsman for a decision.

After completing an initial review of Mr L's complaint, I asked him for confirmation of the final additional liabilities (both student loan costs and income tax) that he'd actually incurred as consequence of the unexpected funds from the SFAS encashment. That's because Mr L would've had to have submitted his tax return to HMRC for the 2023/24 tax year by 31 January 2025 and up until this point, the numbers within his complaint were only estimates. In summary, Mr L explained:

- The extra student loan repayment amounted to £450. He said that because the way the student loan system works, there's every possibility that this amount would never have had to be repaid.
- The tax liability for the 2023/24 tax year was only mitigated because he used a large part of his savings to put into his pension. He also explained that he'd made Gift Aid donations of £4,000 too in order to help avoid pushing his income into the higher rate tax bracket; something that wouldn't have been necessary had SFAS not misinformed him about the surrender value of his bond.
- The income tax mitigation came at a cash flow cost; he went on to say that he had to borrow money from his father to help fund a replacement car.
- The monies invested in the pension won't be accessible for another 30 years and by which time the rules around gaining access to those monies may well have changed. He also said that as a consequence of putting the extra monies into his pension, he's forgone interest of around 4.5% that he could've earned had he put it in his ISA.
- He would never have considered making the Gift Aid payment had SFAS not made their error.

After looking at the complaint, I wrote to both Mr L and SFAS explaining that I was issuing a provisional decision on the case as, having carefully considered the submissions of both parties, I said that I was minded to reach a different outcome to that of our Investigator and uphold the consumer's complaint. The provisional decision gave both Mr L and SFAS the opportunity to provide any further evidence that they wished for me to consider before I reached a final decision.

What I said in my provisional decision:

I have summarised this complaint in less detail than Mr L has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. The crux of Mr L's complaint is that he's unhappy with the resolution that SFAS have set out to put his complaint right. There doesn't seem to be any doubt that SFAS made an error in the surrender information that they provided to Mr L, so my decision will focus on whether SFAS's offer of £300 to Mr L to resolve the issue is fair and reasonable in the circumstances.

My role is to consider the evidence presented by Mr L and SFAS in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm upholding Mr L's complaint and I'll explain why below.

When mistakes occur, we'd typically ask the business to put the consumer back into the same, or as close to the same position that they would've been in were it not for the error. SFAS say that they've already tried to do that because they offered Mr L the option of returning all of the monies to them so they could reinstate the bond and then arrange for a partial surrender. SFAS also say that Mr L didn't accept their offer and instead made 'consequential decisions to reduce his tax liability'. But, from what I've seen, the bond proceeds were issued on 16 October 2023 and Mr L complained to SFAS the following month, but SFAS didn't table the option of reinstating the bond with him until 6 February 2024. That was well after he'd spent the surrender proceeds on his house purchase so that was never an option he could've made use of. In addition, whilst it may have also been possible for Mr L to return some of the monies, rather than the full amount, that was never an option that SFAS proposed.

Additional income tax liability

In his submissions to this service, Mr L says that he needed £55,000 for his house purchase and when SFAS advised him that his investment bond was worth £46,800, his father agreed to help fund the balance needed for the property.

Mr L has explained that had he known his investment bond was worth £73,772, he may have only taken as little as £30,000 to avoid all taxation and any student loan costs. Mr L says that the assessment he made when deciding to take out the £46,800 was based on the tax at that time and leaving £16,800 wasn't worth his while but leaving £43,000 could have been. Whilst I can't say for certain what would have happened had SFAS informed Mr L of the correct amount of the bond, I'm not persuaded that he would have extracted less. I say that because he was reliant on his father to help with the house purchase, who he has

explained had to pause his own investment decisions to help him. I therefore think, on balance, that Mr L wouldn't have wished to impede his father's plans any more than he was already doing.

Had Mr L been advised of the correct policy value, I think it's more likely than not that he would've taken at least the £46,800 and potentially an amount up to the £55,000 (but not the full amount of £73,772). Whichever of the two amounts that he landed on, or possibly a figure somewhere in-between the two, is largely immaterial now because the consequence of the excess is already known.

Whilst Mr L was initially anticipating an additional income tax liability of around £5,000 because of the unexpected c£27,000 funds from the surrender, it's since transpired that because of the Gift Aid and pension payments that he made, he wasn't pushed into the higher rate tax band, and it would seem, no further income tax was due as a consequence. But, as a result of making those contributions, Mr L says that impacted his personal cash flow and he then became reliant on having to borrow monies from his father to assist with the replacement of his car when it broke down recently. Whilst I'm not disputing that Mr L did borrow monies from his father, I'm also cognisant of the fact that had the original encashment proceeds only been £46,800 as SFAS had initially stated, Mr L would've still needed to have borrowed the money from his father to replace his car because the bond would've only yielded enough for his house purchase. In any event, despite receiving an additional £27,000 that he wasn't expecting, £16,000 was added to the pension and £4,000 was paid out in Gift Aid, leaving him with a surplus of c£7,000. So, even having had the benefit of those extra monies, Mr L was still reliant on borrowing from his father and therefore I'm not persuaded that the additional monies have resulted in a challenging cash flow position for Mr L. I do however accept that Mr L had to apportion that additional £27,000 (or least £20,000 of it) on areas that he may not have initially chosen to do had he not been faced with a large additional income tax bill.

Mr L says that he's concerned that the monies invested in his pension won't be accessible for another c30 years and he's forgone interest of around 4.5% that he could've earned had he put it in his ISA. However, that ignores the fact that to earn the 4.5% interest, he'd have had to take the money out of the bond and (potentially) pay income tax on it first before it could then be invested into his ISA. Whilst his pension doesn't pay a set rate of interest (on the assumption that it's invested in equities or a managed fund), it would, with the passage of time, typically benefit from tax efficient investment growth over that 30 year period so I can't safely conclude that Mr L has been put at a significant disadvantage by making the pension payment. However, I am of the view that in making the pension contribution, he has lost the access to those monies that he would've ordinarily had were they left in the investment bond. So, it's therefore fair to conclude that Mr L has been inconvenienced by SFAS's misinformation.

Student loan

The key part of Mr L's complaint is that he says because of SFAS's actions, his earnings for the year were higher than he anticipated and that then required him to make a higher-than-normal student loan repayment. And, from what I've seen of the evidence that Mr L has shared with this service, the extra cost of the student loan amounted to £450 for the 2023/24 tax year. SFAS say that at some point, the loan would have to be repaid and in making an increased payment now, this would only serve to benefit Mr L because it would reduce the amount of interest he'd pay back overall – but it's not that simple. Mr L explained that had SFAS advised him of the correct amount of his investment bond, he wouldn't have asked for a full encashment, thereby avoiding the additional payment back to the Student Loan Company that year. He went on to say that because of the way the

student loan system works, there's every possibility that his loan may never have had to be repaid in full so the benefit of the additional contribution has potentially been wasted.

I've given careful thought to the fact that whilst Mr L may not have taken any additional monies beyond the £55,000 he needed for his house purchase in October 2023, at some stage in the future, he would've had to extract the remaining monies from his investment bond and in doing so, depending upon his circumstances at the time, could have likely added to his other income which then became attributable to additional student loan repayments. But, SFAS have taken away Mr L's choice of when and how much money he took out of his bond and as a result, forced him into a position where he's had to pay back part of loan that there's a possibility he may never have had to pay back in full. According to the Gov.uk website, there's a wide number of important factors to consider on whether it's beneficial to make additional student loan repayments, so I don't think it's as straight forward as SFAS would suggest that the extra contribution would be in Mr L's best interests.

As I've already explained above, I'm minded to accept Mr L's submission that he'd have only taken an amount (up to the £55,000) from the investment bond that he needed for the house purchase so it therefore follows that I require SFAS to refund the overpayment that Mr L made to the Student Loan Company that he was forced into paying because of the incorrect information that they provided.

Responses to my provisional decision

After reviewing my provisional decision, Mr L responded explaining that he accepted the decision and had no further comment to make.

SFAS, however, explained that they were of the view Mr L could have paid back some or all of the monies from the encashment proceeds had he wanted to because he made the respective decisions he did after being advised of his options by themselves.

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.

From what I've seen, the only communication that SFAS provided to Mr L about returning the encashment monies to them was anchored around the full amount, rather than some of the proceeds. I've studied all of the evidence again and it appears the first time that the option of reinstating the bond was highlighted to Mr L wasn't until 6 February 2024, which is after the point when he says some of the monies were used for the house purchase (and well after SFAS's final resolution letter of 21 December 2023 to his complaint). I've seen no evidence that demonstrates a partial return of the encashment proceeds were offered to Mr L in a timely manner to help resolve the issue.

I acknowledge that it was Mr L who chose to make the pension and gift aid contributions and he did so after SFAS informed him that he could remit the monies back to them to reinstate his bond. However, SFAS's email to Mr L on 6 February 2024 doesn't state that a partial reinstatement of the policy was an option. In fact, within SFAS's evidence pack that they've submitted to this service, I've seen correspondence between two SFAS colleagues (dated 5 February 2024 at 10:44) stating that the bond could only be reinstated providing that the funds were returned *in full*. And despite Mr L specifically asking SFAS in an email on 8 February 2024 (at 08:04) whether they'd be prepared to accept a partial return of the

funds, SFAS wrote back to him on 21 February 2024 (at 12:22) stating that they required the *full* amount returning to them. But, given Mr L has spent much of the funds by that point, that wasn't an option for him.

For completeness, I've also listened again to the three telephone calls that SFAS submitted to this service as part of their evidence pack. The option of returning all or some of the encashment proceeds weren't raised in those conversations either, so I can't reasonably conclude that Mr L was ever placed in an informed position about taking steps to rectify the issue.

What's clear to me is that Mr L was misinformed about the value of his bond. He told SFAS as early as November 2023 that he didn't need all of the monies and had he been informed of the correct value, he'd only have taken a partial withdrawal. Mr L has presented evidence to this service that demonstrates he took steps to try and mitigate the impact of SFAS's error but in doing so, it's impacted him financially. As I've not been presented with any new evidence that's made me change my mind, it therefore follows that I have reached the same conclusion for the same reasons that I set out above in my provisional decision and I'm therefore upholding Mr L's complaint

Putting things right

I'm of the view that SFAS's actions have deprived Mr L of the choice of if, when and how he should take his investment bond proceeds. SFAS must take the following actions to put things right for him:

Student loan

Refund the £450 additional student loan repayment that Mr L had to make as a consequence of the further bond encashment proceeds that he wasn't expecting from SFAS.

SFAS should pay Mr L 8% p.a. simple interest on the £450 from 31 January 2024* (the deadline for 2023/24 tax payments) to the date of my final decision.

- *If Mr L paid the £450 earlier than 31 January 2024, he should provide evidence to SFAS and they should base their interest calculation on that earlier date of when the £450 was actually paid.
- SFAS may deduct income tax from the interest payment if required to do so.
- SFAS must make the payment (of the £450 plus interest) to Mr L no later than 28 days after receiving the customer's acceptance of my final decision.

Trouble and upset

I've thought carefully about the timeline of Mr L's complaint and the impact that he says these events have had on him. I've also considered the steps that Mr L took to limit the impact of SFAS's mistake on him. He made a pension contribution and Gift Aid payment to lessen the income tax liability that came from the additional investment bond proceeds. Whilst I've already acknowledged that Mr L will eventually benefit from the pension contributions at retirement, had he not made that payment (along with the Gift Aid), the impact on his income tax liability would likely have been greater. Mr L is now in a position where he's lost access to the pension contribution monies in the short term.

So, I'm not satisfied that SFAS's offer of £300 reflects the trouble or inconvenience that their actions have brought about. And, as such, in light of what I've seen and the disruption caused and effort needed on Mr L's part to sort this out, I'm of the view that an award of £600 better reflects the inconvenience caused and is fair and reasonable in all of the circumstances.

Therefore, SFAS should pay £600 to Mr L. If SFAS have already paid Mr L the £300 that they originally offered him to resolve the complaint, they can take that into account and they should pay him a further £300.

My final decision

I'm upholding Mr L's complaint and require Scottish Friendly Assurance Society Limited to settle the complaint in the manner that I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 10 April 2025.

Simon Fox
Ombudsman