

The complaint

Ms D is unhappy with advice she received in February 2002, given by an appointed representative (AR) of Quilter Holdings Limited (Quilter).

What happened

As Quilter are responsible for this complaint I will refer to them throughout this decision.

Ms D met with an adviser from Quilter's AR in January 2002, the adviser completed a fact find and then produced a review of Ms D's protection needs. The document provided information about whole of life, income protection and long-term care. I will only comment within this decision about the advice Ms D received to take out her whole of life policy as that is the complaint that has been referred.

The review contained a summary of the adviser's understanding of Ms D's objectives and their research. On page one '*Management Summary*' it stated:

"You have stipulated that you wish to have 'certainty' in your financial provision and thus require, if at all possible, guaranteed contracts only, whereby the provider cannot come back for a 'top-up' in later years."

In the summary conclusion the adviser stated:

- 1. "There is only one Whole of Life life assurance contracts that exactly matched your criteria. The Scottish Provident International plan guarantees that the sum assured of £400,000 will be payable on death regardless of fund performance. Should the fund value exceed the sum assured at the time of death then the beneficiaries will be receive the greater amount. The policy has no review periods so once the initial premium is paid there will be no further premiums to pay regardless of fund performance or age to ensure that the original sum assured be payable on death."*

On page three under a title '*Whole of Life*' further detail is provided about what Mrs D has explained about her needs in relation to life assurance it stated:

"You have asked us to research for a whole of life plan that offers the following features:

- single premium investment*
- guaranteed sum assured*
- guaranteed premium*

...

You will see that only one of the company's guarantee both the sum assured and the premium. The other providers' sum assured is directly linked to the fund value of the investment.

Your final decision may be affected by the actual investment performance However, these may be irrelevant if using Scottish Provident as the sum assured is guaranteed at outset and does not change regardless of fund performances.”

I have been provided with the life assurance application form. Section three under ‘*Additional Life Assurance Cover*’ it asks if additional life assurance cover should be included – the box is ticked yes. A supplementary form was completed, the level of cover selected for ‘*Additional Life Assurance Cover*’ was £400,000. Ms D signed it on 18 February 2002.

Ms D said that the illustration prompted some confusion and so the adviser reached out to Scottish Provident to ask some questions. On 19 February 2002 Scottish Provident responded with the following answers;

- Does the beneficiary get £400,000 when the policyholder dies at anytime or is this reliant on the performance of the underlying assets?
 - o If life cover is taken out for £400,000 this will be paid out to the beneficiaries on the death of the policyholder, even if the portfolio value is less than this amount.
- Does the cover finish at age 91 as investment value on the illustration shows zero at that age?
 - o Life cover does not finish at age 91. The projections are shown for a period of 50 years. . . .The policy had an inclusive death benefit therefore the beneficiaries will receive £400,000 or the policy value, whichever is the higher.
- Is the policy reviewable.
 - o No.

On 20 February 2002 the adviser provided Ms D with a suitability letter. It summarised Ms D’s objectives as ‘*to guarantee a sum assured of £400,000 payable on your death*’. The letter goes on to state:

“Please find attached the personalised confirmation from Scottish Provident that the sum assured is guaranteed on death, without review and regardless of fund value.”

I have been provided with a copy of the policy conditions. At page two the policy charges are set out, at point 15 ‘*Additional Life Assurance*’ it states:

“. . . .The policy will lapse without value if the value of the Investment Fund is insufficient to meet the costs of the Additional Life Assurance cover in any period.”

And on page four under ‘General’:

“24) Lapse

The policy will lapse without value should the assets of the Investment Fund reduce in value to zero.”

Ms D took out the policy. In 2008 she said she became concerned due to correspondence she received from Scottish Provident and so she reached out to the adviser again. Reassurances were given that the £400,000 sum assurance would be paid in the event of Ms D’s death, in the form of answers from Scottish Provident via the adviser.

Ms D’s whole of life assurance policy has since lapsed and so on 30 March 2023 Ms D referred a complaint to Quilter. In summary she said that she had wanted a life insurance product that guaranteed a lump sum payment of £400,000 on her death. She made this clear

to the financial adviser in 2002, but she was recommended a product from which the benefits were dependant on the linked investment performance. Her whole of life policy has now ceased as it has a zero value.

On 22 May 2024 Quilter issued their final response letter. They said that Ms D had referred her complaint too late and so it was out of jurisdiction. This has been addressed by an ombudsman at this service who determined this service has jurisdiction to consider this complaint. As such I won't comment on it any further within this decision.

In relation to the merits of Ms D's complaint, Quilter didn't uphold her complaint. In summary they said that Ms D's aims and objectives were considered in full by the adviser and he recommended a product that was suitable for those needs. The adviser can't be held responsible for alleged incorrect information provided by the life assurance provider. The link between the investment performance and the sum assured was brought up twice by the adviser in direct questions to Scottish Provident – on both occasions they confirmed that the full sum assured would be payable upon Ms D's death. If that is not the case then it's a mistake by the provider, not the adviser.

And they added that in 2008 the adviser no longer acted in a capacity which meant that Quilter was responsible for their actions.

Unhappy with the response Ms D referred her complaint to this service. Following an ombudsman's determination that this complaint was within this service's jurisdiction an investigator reviewed it. They upheld Ms D's complaint, in summary they said that based on the evidence provided it appears the adviser misunderstood the product that was being recommended to Ms D. That it was clear within the policy documents that the policy could lapse, and it was the adviser's responsibility to understand the product that they were recommending to Ms D. The policy did not meet Ms D's needs because she was specific in setting out that she wanted a policy with a guaranteed sum insured, but the policy she took out did not have a guaranteed sum insured.

In order to put things right the investigator suggested Quilter refund the premium that was paid by Ms D when setting up the policy. And to compensate her for the time she has been without those funds award 8% simple interest per annum from the date it was paid until the date it is refunded.

Quilter didn't agree with the investigator, they asked for an ombudsman to review the complaint. In summary they said:

- It is clear the failings are with the provider. The adviser contacted the provider in good faith, it was for the provider to ensure that the information provided to the adviser about the policy was clear, fair and not misleading.
- It's not correct to say that the adviser should have known that the product had features he wasn't aware of.

The complaint was passed for an ombudsman 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.

Having done so I am upholding Ms D's complaint. I will go on to explain why below. When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, Regulator's rules, guidance and standards and codes of

practice, and what I consider having been good industry practice at the time. Whilst I have considered everything that has been provided to this service, I don't intend on commenting on each item. Instead, I will focus on what I have determined are the key aspects of the complaint.

Ms D has complained that the advice she received to take out a whole of life policy was unsuitable, as there was no guarantee of a payment upon her death.

I have considered the fact find, review and recommendation letters produced by the adviser. It is clear from these documents that the adviser understood Ms D wanted to purchase a guaranteed sum insured, which she did not need to put any more funds towards following the initial investment. Considering this the adviser recommended a whole of life policy with Scottish Provident. Ms D asked the adviser some questions about the policy to ensure the sum insured was guaranteed. Following reassurances by the adviser, via questions they had asked the provider Ms D went ahead and made the investment.

It is for the adviser to ensure they understand how a product they are recommending works. And Ms D was entitled to rely on the adviser to fully understand and explain to her how the product would operate.

It is clear from the policy conditions that this product would lapse if the investment fund reduced to zero. And it was clear that the life insurance cost and fees would be deducted from the investment fund. The illustration showed that it was possible that the investment fund would reduce to zero based on the projected surrender values at 5% and 7%. So, I am satisfied that the adviser ought to have been aware of how this product worked. And therefore, that it was not suitable for Ms D's needs. And so, it was unsuitable to recommend it to her.

The adviser set out within their review that no other provider guaranteed the sum assured. And Ms D was very clear this is what she wanted. So, the adviser should have let Ms D know that there were no products which could provide the guarantees that she wanted.

It's not possible to establish exactly what Ms D would have done, had she been provided with suitable advice. I have considered the evidence from the point of sale. Ms D was very adamant that she wanted to be sure the sum insured was guaranteed. So, I'm satisfied she wouldn't have decided to take out this, or an alternative product which did not have a guaranteed sum assured if the way this policy worked had been explained to her at the time. So, I think it fair and reasonable to direct Quilter refund the initial investment Ms D made plus 8% simple interest per annum to reflect the time Ms D has been without the funds.

Provider's responsibility

Quilter have argued that their adviser checked with the provider who should have provided fair, clear and not misleading information. As set out above it is clear from the policy conditions that this product will lapse if the investment fund reduced to zero. However, if Quilter believe the provider mislead their adviser, which led them to recommend an unsuitable product then Quilter would need to take that up with the provider directly.

Ms D was entitled to rely on the advice she received from Quilter's AR. And it was Quilter's AR's responsibility to ensure they had a clear understanding of how the policy worked to make sure it was suitable.

Putting things right

When awarding redress, I'm considering how to put Ms D back into as close to the position she would now be in, but for the unsuitable advice she received. As set out above, I don't think Ms D would have gone ahead with investing in the policy she did, had she been given suitable advice, or another policy as the adviser said there were no other policies that provided a guaranteed sum assured. It's not possible to establish exactly what Ms D would have done at the time, so I think it's fair and reasonable to award 8% simple interest per annum on the amount invested. This is to compensate Ms D for the time she was without the funds. And so, I direct Quilter to:

- Award the total sum Ms D invested when she took out the policy with Scottish Provident.
- Calculate 8% simple interest per annum on the amount, from the date it was invested to the date of this final decision.

If payment of the above compensation is not made within 28 days of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

- Income tax may be payable on any interest paid on the compensation. If Quilter deducts income tax from the interest, it should tell Ms D how much has been taken off. Quilter should give Ms D a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

My final decision

I uphold Ms D's complaint about Quilter Holdings Limited and direct them to award redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 12 February 2026.

Cassie Lauder
Ombudsman