

complaint

Mr S' complaint is that he feels he was mis-sold a mortgage endowment policy in 1988. He considers that Scottish Widows Limited is responsible for the sale of the policy, but it doesn't consider that it is.

background

In 1975 Mr S was sold a life policy by a broker I will call 'M'. The policy included the option to convert it to an endowment policy.

In December 1979 Mr S wrote to Scottish Widows about the life policy. He asked to convert the policy to a 25 year with-profits endowment policy with effect from January 1980. He enclosed the original policy document for endorsement and a new direct debit mandate. However, as the policy hadn't reached the first 'option date', which is when converting was first permitted, the conversion couldn't go ahead.

In March 1988 Mr S contacted Scottish Widows to again enquire about changing his existing policy to an endowment policy. Scottish Widows provided the information requested and instructed that if Mr S wanted to go ahead with the conversion, to sign the declaration it had enclosed. Scottish Widows also gave Mr S a booklet called 'BUYING YOUR HOME' and an application form for a 'House Purchase Endowment' policy.

On 11 April 1988 Mr S signed the declaration to convert his life policy to an endowment. After conversion the former life policy had a target value of £8,313. The same day Mr S also signed a separate application form for a 'House Purchase Endowment'. The form detailed that Mr S had just bought a house and had taken a mortgage with a high-street lender to do so. The policy was to have a sum assured and target of £48,687 over a term of 25 years. This was the difference between the target value of his converted life policy and the mortgage of £57,000 he had arranged with a high-street lender.

The 1988 endowment policy matured in 2013 with a shortfall of approximately £16,000.

In 2017 Mr S complained to Scottish Widows about the sale of the 1988 policy. It informed Mr S that it wasn't responsible for the suitability of the policy. This was because initial commission had been paid to M.

Mr S told us that he asked for the conversion value of his existing policy and when he was provided with that, asked Scottish Widows for an endowment that made up the amount of cover to the same as the mortgage. He had no dealings with anyone else and believes that both the conversion and the new policy were applied for on the same application form. Mr S considers that as he dealt with no-one else at the time, Scottish Widows is responsible for the sale of the 1988 endowment policy.

Following Mr S referring his complaint to this service one of our adjudicators considered it. She concluded that Scottish Widows wasn't responsible for the sale of the policy, i.e. it hadn't advised Mr S to take the policy and had simply provided information for his use. She also explained that at the time he applied for the policy, it was normal for new policy sales that were linked to an old one, to be credited to the broker who had sold the original policy. This being in the situation where the life company didn't provide new advice.

Mr S wasn't happy with the adjudicator's conclusions. He reiterated that there was no third party involved – only himself and Scottish Widows. He pointed out that the claim that the sale was made by M was made by employees of Scottish Widows who were not around in 1988 and the current computer system would also not have existed at that time. Mr S didn't believe the records about the sale are accurate.

Mr S then asked to see evidence that M had received commission for the policy. He said hadn't had any contact with the broker since 1981 and asked why anyone would rely on advice given seven years previous when the world changes so quickly and personal circumstances also change. In paying M commission he considered that there had been an act of fraud perpetrated and suggested that he may approach the police. Subsequently he asked for details of the money paid to the broker, when it was paid and evidence of those payments. He said that he didn't accept that he didn't receive advice simply because no other parties were involved.

Mr S also expanded on his account of events in 1988. He said that shortly before the 1988 policy was arranged he had qualified in his profession and had decided to buy a house. He decided to cash-in his life policy but was told that he could convert it to an endowment and take out another one for the balance. Mr S said that he was given a guarantee by Scottish Widows in 1988 that his mortgage would be paid at maturity. He said that his mortgage lender was also told this. Mr S also subsequently said that prior to 1988 he had never heard of endowment policies.

Mr S asked what evidence we would find acceptable to prove that he had received advice from Scottish Widows in 1988. He also asked what this service would define advice as and asked questions about what we considered to be the 'shelf life' on advice given.

I issued a provisional decision on 28 June 2018, in which I set out my conclusions and reasons for reaching them. The below is an excerpt of that decision, detailing my findings.

'I think it would firstly be appropriate to explain that Mr S applied to convert his life policy to an endowment and take the new top-up policy, the investment industry wasn't regulated. What this means is that if advice was given, any product sold would only have needed to be appropriate for his needs, rather than suitable taking account of all his needs and circumstances at the time. The higher standards that were introduced by the Financial Services Act 1986 didn't apply at the time.'

I would also confirm that there was no need for advice to be given if a consumer didn't ask for it. Even where they did, a financial business didn't have to give advice if it didn't want to. By advice, I mean a consumer being recommended a specific policy, with sums assured, terms and investment choices selected by someone in a financial business. Providing information on which a consumer could make their own decision about what to do wouldn't be considered advice, even if that information was positive about a particular option.'

Mr S has said that no third party was involved in the conversion and the sale in 1988. These were transactions that took place between him and Scottish Widows. I accept that is the case. However, just because no other party was involved, this doesn't automatically lead to the financial business involved having given advice.'

Mr S has said that the conversion of his existing life policy was done at the suggestion of Scottish Widows and he took a top-up policy for the same reason. He has said that he had no knowledge of endowment policies. Whilst Mr S may not have held endowment policies in

his name before, I find it unlikely, given his profession, he would not have looked into the product he was taking before doing so.

In addition, when his life policy was sold, one of the benefits to it was the ability to change it to an endowment policy in the future if there was a need for such a product. It would be usual for an explanation of what an endowment policy was and how it could be used to be given when such a product was sold. Indeed, in 1979 Mr S asked to convert his policy to an endowment and there doesn't appear to have been any involvement of a financial adviser. Whilst Mr S asked to do so earlier than he was allowed to, his request would indicate that he had at least some understanding as to how his life policy worked. It also suggests some knowledge and understanding of endowment policies almost ten years before he again asked for the policy to be converted.

Although Mr S has said that he had no knowledge of endowment policies in 1988, I am not persuaded that this is the case. As such, I think it is entirely plausible that Mr S could have decided to convert his existing life policy and take out a top-up endowment policy without advice, had he wished to. So I will now look at the documentation Mr S has said supports him being given advice.

Mr S has said that the BUYING YOUR HOME booklet evidences that Scottish Widows gave him advice. I have read the booklet and it takes the reader through the entire process of buying a property – from saving for a deposit, making an offer on a property and arranging a mortgage. When discussing mortgages it explains the different types of mortgage – repayment and interest-only – how a mortgage lender decides what to lend and the financial products that would run alongside them. Among the financial products detailed are endowments, both full and low-cost (as Mr S' endowment is). I would also go as far as to say that the explanation about endowments is positive, but so was the experience of such products at the time. That said, it does document the possibility of a low-cost endowment failing to achieve the necessary growth to pay off the mortgage. It says that if this were to happen, Scottish Widows would issue the policyholder with another policy to top-up the expected returns from the first.

Page 27 of the booklet contains closing comments from the then managing director of Scottish Widows. He says 'The purchase of a home may well be the biggest transaction you will ever undertake and I am pleased that Scottish Widows is able to help you not only with the advice contained in this booklet but also with a range of first class contracts one of which is sure to meet your requirements.' I have considered this comment and I would accept that there are some pieces of advice in the booklet, for example, the suggestion that if a consumer is planning to save for a deposit, to do so with a bank or building society that provides mortgages so that they have a better chance of getting one when they come to apply. However, I don't consider that it recommends any particular type of mortgage over any other. Indeed, it says under the title of 'Find Out More' on page 25:

'No booklet of this size can hope to deal completely with such a major subject. You will find books which provide more information to add to what is in this booklet. For up to the minute details of this changing market there are periodicals dealing with various aspects of house-buying and mortgage loans – and, of course, accurate figures and details to suit your own circumstances can be obtained from any of the Scottish Widows' Branches listed on page 29. An enquiry form is enclosed to help you give the necessary details so that accurate figures can be provided.'

Having considered all of the information provided in the booklet I am not persuaded that it advised Mr S, or any other consumer, that they should arrange their mortgage using a low-cost endowment policy.

Mr S also provided another booklet titled 'Why Scottish Widows?' This booklet talks about the background of the company and its performance over the years. It promotes itself as a good investment company that has produced good returns across a number of financial products. Again, there was nothing wrong in it doing so at the time – I have seen nothing to suggest it was anything other than factually correct and the industry in general expected things to continue in the same vein. However, I again don't consider that it recommended that Mr S take out the specific policy he did.

I now turn to the issue of commission. When an independent broker or financial adviser sold a financial product in the 1980s commission would be paid to it for the sale. This commission didn't need to be disclosed to the customer, but it meant that the adviser got paid for the work it did without the customer needing to pay out of their own pocket. Commission would be paid in two stages – initial commission which was paid when the policy was set up and renewal commission (a much smaller amount), which would be paid each year at the policy anniversary.

Over time independent advisers could build up a not insignificant income from renewal commission. When an adviser decided to join up with another to form a new business or was taken over, the renewal commission book would usually be transferred to the new company. In addition, when an adviser decided to leave the industry, it could sell its renewal commission book to a completely unrelated company. The renewal commission payment could also change to a different company if a consumer created links with a new financial adviser. That adviser could have the renewal commission for a particular policy transferred to it to pay it for reviewing the policy as part of ongoing financial advice.

So which company renewal commission is paid to years after the sale of a policy doesn't necessarily give an indication of which company originally sold the policy. As such, whilst I have noted all of Mr S' comments about the renewal commission payments, where that type of commission is now paid or has been in the past, isn't particularly relevant to the question of which company, if any, gave advice.

In addition, and whilst I know Mr S isn't happy with this, it was common practice for commission to be paid to an independent adviser for what was called follow-up business. By this I mean the arrangement of new policies that could be linked to an existing one. That is the case here. M sold Mr S his convertible life policy. He converted it to an endowment and took a top-up policy for the difference between the mortgage and the converted sum assured. If no new advice was given by the life company, and because the two actions appeared to be linked in its eyes, commission for the new policy would be paid to the original independent adviser.

I note that Mr S has said that he has proved that M didn't ever exist. I would comment that M not being on the FCA database doesn't mean that it didn't exist in 1988. At that time there was no regulation and so no register of companies selling financial products existed. The albeit limited records Scottish Widows has from the time of the sale details M as the selling agent and I have no reason to doubt that.

Mr S has also provided a copy of a compliment slip and terms of business from another broker 'B'. These documents are not dated, but our records indicate that B was regulated

between 1988 and 1995. However, it may have been trading before 1988; as with M, the lack of records from before 1988 means that we can't know for certain whether it was or not. The compliments slip states that it is 'servicing Brokers for your old Scottish Widows policy.' Mr S has indicated that he considers this evidences that his original policy wasn't taken out with M. I don't agree that is the case. When an independent financial adviser refers to 'servicing', this means that it is the one who is then currently maintaining the policy and that it probably wasn't the one that sold it originally.

I have for completeness, however, also checked our archive records of advisers who became authorised to sell what became regulated investment products in 1988. There is no record of M becoming authorised to sell investment products, so it seems likely that the reason for the transfer of the renewal commission on Mr S' policies was because it decided not to continue in the industry. As I have explained above, in that situation, it would be normal for the commission book to be transferred to another company, which is likely how the independent financial advisers that Mr S has established wasn't incorporated until May 1988 received the renewal commission.

In summary, I accept that M didn't sell Mr S his endowment policy in 1988. I also accept that the only company he had contact with in 1988 was Scottish Widows. However, the literature Scottish Widows sent Mr S would not indicate that it gave him advice, but rather information to consider and made his own decision. Mr S' recollections about the sale would also support that he was given information rather than Scottish Widows making a specific policy recommendation to him. As such, I am not persuaded that Scottish Widows recommended that he take the policy he did, with its specific features, and as such it is not responsible for whether it was appropriate for his needs at the time. In addition, in relation to guarantees, I am satisfied that the literature sent to Mr S would have made him aware that the endowment he decided to take didn't guarantee to repay his mortgage, although it did guarantee to repay it in the event of death.'

Scottish Widows accepted my provisional decision. Mr S didn't. In response he made a request for documentation and then provided substantive further submissions.

Mr S provided correspondence from two businesses that received commission for the 1988 policy at different points. Both confirmed that they had never had any dealings with Mr S. One of those businesses said that it bought the ongoing servicing rights of B, which it said may have dealt with M.

In addition, he provided an email exchange with Companies House. It confirmed that it had found a company that had almost the same name as that detailed on the agency with Scottish Widows through which Mr S' life policy had been sold, and to which it also paid commission for the 1988 endowment policy. The difference between the company names was that the name on the official register included '(Birmingham)'. That business was incorporated in 1973 and dissolved in 2006.

Mr S reiterated that he considered that M had never existed. He pointed out that the document detailing the agent for his 1988 endowment policy didn't detail the amount of commission paid. He believes that this proves that M didn't exist. In addition he believes the comments from two of the businesses that Scottish Widows paid renewal commission to having never heard of Mr S, supports his stance.

Mr S also clarified his account of how the 1975 life policy came to be converted and the 1988 endowment came into existence. He said that having reviewed his 1979 letter to

Scottish Widows he believes that the last time he had contact with his IFA (B) must have been 1979, not 1981 as he'd previously recollected. He said that an agent from the IFA approached him at his parents' home. The agent 'told me what to do & dictated the letter to me.' He also said 'I had no idea what I was doing frankly.' Mr S says that asking for the conversion was an error; that the conversion didn't take place, but his premiums increased to over £10 per month anyway. Mr S went on to say that although he was planning in 1987 to buy a property, it never crossed his mind that the life policy would be of any help. He said that clearly what advice he was given in 1979 didn't get through. These circumstances, Mr S believes, evidences that he didn't understand financial products.

He said that on many occasions he failed to pay the premiums to the life policy, but caught up with them, as he felt that was the right thing to do. He then enquired about cashing in the policy in 1987 when he was thinking of buying a car. He didn't do so because the surrender value wasn't good. It was at this point that Scottish Widows told him that he could convert the policy to an endowment if he wanted to buy a house in the future. Mr S asked why he would have considered surrendering the life policy if he had understood endowment policies at the time.

Mr S went on to explain that in 1988 his focus changed and he wanted to buy a property. He says he called Scottish Widows for advice and it sent him some booklets. He explained that the decision to have an endowment backed mortgage hinged on the 1988 policy, because it was the larger policy. Mr S says that if he hadn't arranged that policy, he would have chosen a different method of repaying his mortgage. Scottish Widows convinced him to take out the endowment policy. It sold the idea of an endowment so he naturally kept the original life policy and converted it, after previously wanting to cancel it. The decision to convert the existing life policy followed on from him deciding to have an endowment mortgage, having read the documentation Scottish Widows sent him. Mr S also said it is blindingly obvious that only when you want to get a mortgage you actually engage in methodologies and methods.

Mr S said that whilst I didn't think that the booklets he was given in 1988 gave him advice and recommended he take out an endowment; advice and a guarantee was how he took the information he was given.

Mr S was unhappy about the inclusion of details about his previous convertible life policy in my provisional decision. He has stated that policy is not being contested and as such, my conclusions were wrong as I was discussing the wrong policy. He also accused me of attempting to throw in 'red-herrings' about the previous contract to 'muddy the water'. He considers that the 1975 life policy is incidental and irrelevant.

my findings

I have considered all the available evidence and arguments, including Mr S' further submissions, to decide what's fair and reasonable in the circumstances of this complaint.

I have noted Mr S' concerns about my consideration and comments about his existing policy. When considering a complaint I must consider all of the circumstances at the time. As the conversion of the existing policy and the new application for the policy Mr S is complaining about were done at the same time and both were linked to his mortgage, I can't ignore the existence of or what happened with the life policy.

As for the original attempt at converting the life policy being at the instigation of the IFA, I can't say what happened for sure as it was so long ago and Mr S' letter is the only

documentary evidence available. However, it seems unlikely that this happened in the way that Mr S has suggested. Firstly, the IFA would have had the information about the policy and would have known that it couldn't be converted yet. In addition, if a conversion were to take place, it would be normal in the circumstances for the IFA to make the arrangements. Not least to ensure that it received any commission that would be due because of the increase of premium that would usually occur. Overall, whilst I accept it is possible that the 1979 letter was produced in the way Mr S has recently recollected, I am not persuaded that the financial adviser was involved in the attempted policy conversion.

Mr S has reiterated that he considers that the booklets he received in early 1988 constituted advice to take out an endowment policy with Scottish Widows and a guarantee regarding the returns that would be received. He has detailed numerous quotes from those documents that he believes supports this. Whilst I appreciate what Mr S has said, the sections he has quoted can't be considered as isolated statements; the documentation has to be read as a whole. When this is done, as I explained in my provisional decision, the documents are positive about endowments, but they don't provide a guarantee. Indeed, it is explained what action would need to be taken if any policy taken failed to perform as expected – a top-up policy arranged to cover the shortfall. Although in the environment at the time the documents were produced this didn't seem a likely outcome, it was clear that it was a possibility.

Mr S has said the fact that a top-up policy was not issued to him means that the policy guaranteed to pay out its target value. This is not the case. A top-up policy would always have had to be issued with Mr S' involvement – he would have had to ask Scottish Widows for assistance with any projected shortfall. In addition, circumstances overtook such arrangements with the mortgage endowment review ordered by the regulator in 1999. This required product providers to highlight the risks associated with individual endowment policies and encourage policyholders to deal with any potential shortfall, but not to influence them in any particular direction to do so. So Scottish Widows not issuing a top-up policy to Mr S doesn't indicate that the returns from his policy were guaranteed or that there ever was such a guarantee.

As for Scottish Widows accepting the assignment of the two policies for Mr S' mortgage constituting a guarantee that they would repay the capital sum; I can't agree with Mr S' reasoning. The mortgage lender would have understood what an endowment policy was and how it worked. It deciding to assign the policies to itself doesn't constitute any sort of guarantee by Scottish Widows. Indeed, Scottish Widows wouldn't have been involved in that process, other than to note the assignment against the policies. The assignment was an arrangement between Mr S and his lender.

In relation to whether the documentation represents advice, nothing that Mr S has said changes my previously expressed view of this. To be considered advice, Scottish Widows would have had to recommend a specific policy in detail. All it seems to have done was provide information that was accurate at the time of printing.

Mr S has highlighted that Scottish Widows relied on the commission information it had on file when it said it didn't sell the policy; that it was sold by an IFA. He says the information that has come to light since proves that was wrong. However, the fact that Mr S' former IFA wasn't involved in the sale doesn't mean that Scottish Widows gave advice. The fact that it paid commission to the IFA indicates that it didn't – it wouldn't pay another business for work it had done.

Mr S has repeated his concerns about where the renewal commission was paid and how he thinks that this means Scottish Widows point of sale records are fabricated. The fact that neither of the businesses Mr S contacted has any record of his existence doesn't mean that Scottish Widows records are wrong about the initial commission. I explained in my provisional decision how commission payments are passed on or sold on by financial advisers. In this case, one of the businesses Mr S contacted confirmed that it bought a commission book, which supports my earlier explanation about how such things happen. When a commission book is passed on, customer details wouldn't necessarily be given to the new business – it would depend on the relationship the existing owner of the book had with that customer and what type of relationship the purchaser intended to have. Often all that is passed on is the product provider and the policy number.

Mr S has said that B worked from the same address as that which Scottish Widows has for M. He has alleged that Scottish Widows used the correct address and made up the business name. Having looked at the address, it appears that several businesses operate from that address currently, so that may well have been the case in the past. As for the existence of M, I remain satisfied that it did exist. I say this as the point of sale documents for both policies notes the same agency number for commission payments. The name accompanying the agency number varies slightly – 1975 has brokers on the end of the name. However, the fact that it is the same agency number means that it's the same business, even if it decided to use slightly different trading names at different times when dealing with Scottish Widows.

As for the information that Mr S obtained from Companies House, I don't think the lack of the geographical reference from the name on the Scottish Widows agency means that it isn't the same company. It was the right name in the right geographical area to match the word that was included in the registered name. The business was also trading at the right time, as it was incorporated two years before Mr S received advice to take his convertible life policy. It was also trading from the same address as Mr S remembers attending to see his financial adviser.

Mr S has asked why I consider that his profession would mean that he had an understanding of endowment policies. I didn't say that was the case. What I said was that given Mr S' profession, he would have been aware of the need to thoroughly understand financial arrangements before entering into them. As such, I found it unlikely that he would have applied for a financial services product without ensuring that he understood it first.

I have considered all of Mr S' comments and evidence, but I am not persuaded that Scottish Widows provided Mr S with advice to take out the endowment policy he has complained about. I would refer Mr S back to my provisional decision where I explained what advice is in a financial services environment – there needs to be a personalised recommendation for a specific individual. That was not the situation when Mr S arranged his endowment policy. As such, Scottish Widows is not responsible for whether that policy was appropriate for Mr S' needs and circumstances at the time it was arranged.

my final decision

My final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr S to accept or reject my decision before 28 September 2018.

Derry Baxter
ombudsman