

## The complaint

Mr D complains about The Royal London Mutual Insurance Society Limited trading as Scottish Provident, referred to as “*Scottish Provident*” or “*the business*”.

In short, he says that Scottish Provident failed to identify his late wife’s (Mrs D’s) vulnerability and capacity to make informed decisions – regarding their joint Whole of Life (WOL) policy – following a policy review in 2018. As a consequence, the sum assured was reduced and he received a smaller pay out than he was expecting, following the sad death of Mrs D.

Mr D is being assisted by his son, referred to as his (and Mrs D’s) son or his “*representative*”.

## What happened

Mr and Mrs D had a joint, first life, reviewable WOL policy, taken out in September 1998. The policy was first reviewed after 10 years in 2008. Thereafter, it was reviewed every five years – initially in 2013 and then in 2018 – the latter review is the subject of this complaint.

Mr D’s representative says that Scottish Provident should’ve checked to see if Mrs D had mental capacity following the review in 2018, before accepting her instructions.

One of our investigators considered the complaint but doesn’t think it should be upheld. In summary, he said:

- It’s the policyholder’s responsibility to notify Scottish Provident of any personal issues. There were no such issues flagged up in this instance.
- At each review, in response to the information provided – containing the options available – it would be a matter for the policyholder to choose a suitable option given their circumstances and inform Scottish Provident. It would then make the necessary changes in line with the instructions.
- The evidence shows that following the 2018 review Mrs D selected the option to maintain the premium of £175.80, for a reduced level of cover in the sum £22,424. She returned the signed and dated instructions making clear what she wanted.
- A call recording dated 7 August 2018 shows that Mrs D called Scottish Provident following receipt of the review letter, to discuss the options available to her. Following some discussion, she said that she’d call back after speaking to her son.
- There was nothing to suggest that Mrs D didn’t understand what was happening, she also didn’t raise any health concerns.
- About a month later, on 6 September 2018, Mrs D called Scottish Provident again regarding her options. She decided to keep her premium the same and reduce the level of cover. The adviser explained that from 22 September 2018 the sum assured would be reduced to £22,424. Mrs D confirmed that she’d already sent the form back with the relevant option selected.
- There’s nothing within the calls which suggests that Mrs D didn’t know what she was doing, or that a family member had to be present because she couldn’t understand what was going on.

- Scottish Provident simply responded to the instructions from Mrs D as the policyholder and carried out her wishes in good faith.
- In the circumstances he can't say that Scottish Provident did anything wrong.

Mr D disagreed with the investigator's view. In short, his son made the following points:

- The suggestion that Mrs D had an obligation to highlight her vulnerabilities is misguided. She wouldn't have been aware that she required special considerations. The industry regulator – the Financial Conduct Authority (the FCA) – requires the company to identify that a customer might be vulnerable not the other way round.
- It was noted that Mrs D wished to discuss the policy with her son, this wasn't followed up and he wasn't made aware of the policy until she passed away.
- The fact that she didn't speak to her son is evidence of her not being mentally capable of consenting to the alteration of the policy.
- Scottish Provident should've picked up on Mrs D's vulnerability during their dealings with her, and not the other way round, for the following reasons:
  - She wanted to speak to her son which demonstrates a lack of confidence in her own decision-making abilities.
  - Illness caused delay in sending the forms back.
  - Confusion by referring to the investment as a pension several times before being corrected by the adviser. There were no steps taken to ensure that she knew the difference.
  - Expressed concerns about affordability of the policy and the fact that she couldn't afford any other option suggests financial hardship. She was a pensioner, so age related issues weren't considered on either call.
- According to the FCA guidance, Scottish Provident should've been able to identify signs of vulnerability but didn't.
- There's lack of expertise to comment on the letter from doctor. The letter shows that there are some issues, and further care was required which Scottish Provident didn't act upon.
- Scottish Provident has consequently failed to take any action to adjust the product, and therefore have failed to consider her circumstances.

The investigator having considered the additional issues, wasn't persuaded to change his mind. In summary he said that he appreciated Mrs D was going through financial difficulties, but Scottish Provident gave her options as to what she could do. He's still unable to say that Scottish Provident did anything wrong by acting on her instructions.

As no agreement has been reached the matter has been passed to me for 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 agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr D (and his son) say, I can't safely say that Scottish Provident behaved unreasonably by not questioning Mrs D's instructions – and her mental capacity/vulnerability – before accepting her instructions.

Before I explain further why this is the case, I think it's important for me to note I very much recognise Mr D's strength of feeling about this matter. The representative has provided

detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr D and Scottish Provident, and 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, but unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I don't uphold this complaint, in brief, for the following reasons.

- Despite what Mr D's representative says, in the circumstances, and on balance, I'm not persuaded Scottish Provident has done anything wrong by not questioning Mrs D's mental capacity/vulnerability before accepting her instructions following the 2018 review.
- Financial businesses aren't generally obliged to make these sorts of enquires as standard, unless there is a reason to, and there was nothing on file to suggest that it should with Mrs D.
- On balance I don't think Scottish Provident had any reason to question Mrs D's instructions, so on balance I don't think it has done anything wrong by not doing so.
- Despite what Mr D's representative says about Mrs D's mental state, illness and/or purported confusion, Scottish Provident wasn't made aware of any relevant issues that would cause concerns.
- I've seen no evidence that persuades me that Mrs D was incapable of making her own decisions in response to the review in 2018.
- I agree with the investigator that it's ordinarily the policy holder's responsibility to make Scottish Provident aware of any such issues. I'm mindful that Mrs D acted on her own volition and there was no suggestion that she was incapable of making her own decisions.
- Despite what the representative says, it's arguable that Mrs D suggesting that she'd speak to her son and then get back to Scottish Provident suggests she was conscious of the need to make the right decision for her (and Mr D) and that she might need time. Whether or not she did speak to her son I don't think ought reasonably to have been a concern for Scottish Provident, because it was a matter for her whether or not she sought advice or consulted someone else.
- I note Mrs D called Scottish Provident herself, on 6 September 2018, to talk about her options, she was adamant that she didn't want to pay higher premiums. This again didn't raise any red flags or suggest that she had any issues deciding a suitable option for herself.
- Even if during a conversation with Scottish Provident Mrs D referred to the investment as a pension a few times, this isn't evidence that the business should've been concerned.
- I note the call operative also confirmed when the changes would take effect and there was no objection or surprise from Mrs D. Based on this, I'm persuaded that she was keen to maintain her premiums (and consequently reduce the level of cover) – in other words she had no interest in increasing her premiums – because she couldn't afford to pay more to maintain her level of cover which isn't uncommon with a policy that's been maintained for over 20 odd years and the lives assured are much older.
- According to the business the policy was chosen on a "*Maximum*" cover basis, which was designed to provide the highest level of cover for the lowest premium. Unlike a

standard cover basis – which is more expensive from the outset – the premiums are likely to be higher in longer run for the same level of cover.

- In other words, Mrs D's decision to reduce the level of cover doesn't mean that she was financially vulnerable, such that Scottish Provident should've given her some special consideration and in not doing so it's done something wrong. That's not how these policies work, and it was always an option available to her.
- Based on what Scottish Provident says, it seems that Mr D and Mrs D weren't in a position to take out the policy that cost more. I note what their son says about their financial position – especially in relation to credit card debts and so on – this may explain why Mrs D chose option B, which was due to be next reviewed in November 2023.
- I note that in neither call was Scottish Provident made aware that Mrs D was unwell in any way, either by Mrs D herself or a concerned third-party.
- On the face of the evidence, and on balance, despite what Mr D's son says, I'm unable to safely say that Scottish Provident had reason to think Mrs D didn't know what was going on, or that she was incapable of making her own decisions.
- Despite what Mr D's son says, I've seen nothing to suggest that an (appropriate) adult should've been present, or that Scottish Provident did anything wrong by discussing the case with Mrs D without an adult present.
- I agree with the investigator that Scottish Provident carried out the instructions from Mrs D (as its policyholder) and did so in good faith in the absence of any evidence that it should have questioned her instructions or not proceed unless an adult was present.
- I'm mindful of Mr D's son's comments regarding the medical letter from Mr D's doctor and the medication she was on. I note the doctor says: *"All of these listed medications can affect cognitive function especially in elderly, causing drowsiness, memory impairment and confusion."* but she doesn't say that Mrs D wasn't of sound mind and/or that she was incapable of making up her own mind when it came to her finances. Despite what Mr D's representative says, I don't need expert medical evidence in order to reach this conclusion.

I appreciate that Mr D will be thoroughly unhappy that I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. Whilst I appreciate his frustration, I can't safely say that Scottish Provident behaved unreasonably.

In other words, on the face of the available evidence, and on balance, I can't uphold this complaint and give him what he wants.

### **My final decision**

For the reason set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 November 2023.

Dara Islam  
**Ombudsman**