

The complaint

Mrs M complains that Scottish Widows Limited t/a Clerical Medical didn't let her know she could have shopped around for an annuity using the open market option, which might have made her better off.

Mrs M is represented in this complaint by a claims management company ("CMC").

What happened

Mrs M had a stakeholder pension plan with Scottish Widows Limited trading as Clerical Medical ("Clerical Medical"). Her chosen retirement date was her 65th birthday in January 2024.

In November 2013, Mrs M contacted Clerical Medical about the possibility of taking her pension benefits early. Clerical Medical provided Mrs M with a current plan valuation of £8,802 and set out her options about when and how she could turn her pension savings into income for her retirement.

The letter said she should shop around and consider taking financial advice about what to do. It enclosed a copy of the Money Advice Service booklet "*Your Pension – it's time to choose*". It gave her some options about taking an annuity and a tax-free lump sum, with a warning about the Lifetime Allowance. It told her the next steps and reiterated the recommendation to seek financial advice for such an important financial decision.

Mrs M signed Clerical Medical's application form on 27 November 2013, selecting option 4 (for Clerical Medical to pay her tax-free cash, and for the balance to be transferred to another annuity provider). Clerical Medical wrote to Mrs M in December 2013 asking her to clarify her choice, and this was apparently resolved during a telephone call which unfortunately cannot now be obtained. Mrs M decided to purchase her annuity from Clerical Medical, and the first annual income payment of just under £312 was paid in January 2014, when Mrs M turned 55.

In August 2020 and June 2022 at Mrs M's request, Clerical Medical provided information summarising the details of her annuity.

In January 2023 Mrs M's representatives requested details of Mrs M's annuity from Clerical Medical, including information from the point of sale, in relation to a potential financial loss claim. In February 2023 Clerical Medical responded to Mrs M's representatives confirming her annuity had been set up direct, on a non-advised basis, with no independent financial adviser ("IFA") involvement.

It confirmed it was not an enhanced annuity, and that these had only launched to the IFA market in early 2014, and no medical questionnaire had been requested. It provided copies of the information from 2013 when Mrs M applied for the annuity, and confirmed she'd been given an illustration and quotation, but the provision of market-leading quotes wasn't a regulatory requirement at the time. And the booklet and letters Mrs M had been given said she should shop around before making her decision. Mrs M had completed the application

form herself, and her requirements were confirmed in a phone call on 24 January 2014, but they were unable to provide the transcript of that call.

In May 2023 Mrs M through her representatives complained to this service, saying Clerical Medical hadn't treated her fairly. Mrs M said she hadn't been told she could shop around to see if she'd be better off taking an annuity with another provider, through the open-market option ("OMO"). And that Clerical Medical had failed to provide her with the calculations to show how its quote compared to a quote from a market-leading provider, which they said is a regulatory breach.

In August 2023 Clerical Medical issued its formal response to Mrs M's complaint. It didn't uphold the complaint, as the copy letters clearly showed Mrs M had been recommended to shop around using the OMO in 2013 when she applied for her annuity. The letter ended by saying that Clerical Medical was pleased Mrs M had agreed during a telephone call that her complaint was resolved.

However Mrs M's representatives said they still wanted this service to review the complaint. So one of our investigators looked into what had happened, but she didn't uphold the complaint. She was satisfied from the information provided to Mrs M in 2013 that she had been recommended to shop around using the OMO, and to seek financial advice to help make her decision. Mrs M had returned her signed and dated annuity application form in December 2013 and the annuity was set up on that basis. She said it wasn't clear if Clerical Medical had provided the calculations Mrs M had asked for but recommended they do so.

Mrs M's representatives asked for an ombudsman to review the complaint. They said even if Mrs M had been told about it, as a retail client she wouldn't have understood what was meant by the OMO.

So the case has come to me.

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.

The event being complained about, which is Mrs M's application to purchase an annuity in December 2013, happened more than six years before she complained in 2023. Clerical Medical hasn't raised a time bar objection, so I'm able to consider the merits.

Mrs M says when she applied for her annuity she wasn't advised to shop around to check that the annuity Clerical Medical could offer was the best option for her. And that Clerical Medical was obliged under COBS 19.9.7 to provide a "market leading quote" to help her make a decision. And even if Clerical Medical had told Mrs M about the OMO, they didn't ensure that as a retail client she understood what it meant.

The information provided by Clerical Medical from 2013 suggests Mrs M contacted them when she was approaching age 55, to ask about taking her retirement benefits before her normal retirement date in 2024. Mrs M was sent a letter dated 20 November 2013 which Clerical Medical also copied to Mrs M's financial advisers at the time, although Clerical Medical say Mrs M made the decision without IFA involvement. The letter included the following:

"Remember you can choose to buy your retirement benefit from us, but you don't have to, and you should consider shopping around. This is known as the Open Market Option (OMO)

and is your right to compare the income we can offer you against the income available from other pension companies, as you might get a higher income if you move to another company. Clerical Medical may not offer a product that best suits your needs. Which product is best for you will depend on your individual circumstances when you retire”.

In bold type it also said **“You do not have to buy an annuity from us, and you should shop around to make sure you buy the right type of annuity for you. The booklet “Your pension – it’s time to choose” contains more information on how to collect different quotations from different annuity providers”.**

I think this makes reasonably clear to a retail customer like Mrs M that she had the right to shop around and why she might be better off doing that. I’m satisfied it explained what the OMO is without using confusing jargon.

And as well as its own telephone number, Clerical Medical included the number of the Pensions Advisory Service where Mrs M could get free, impartial advice. So I think Clerical Medical did enough to explain the OMO to Mrs M in layman’s terms, and how she could get help if she didn’t understand anything. Mrs M appears to have selected option 4 in error when she actually wanted option 2, as during a phone call in January 2014 she apparently confirmed she wished to purchase her annuity from Clerical Medical not another provider. I’d ideally have liked to listen to that call, although I don’t find it surprising it’s not available after more than nine years. But I think if Mrs M had wanted to use the OMO, she’d have queried receiving her first annuity payment from Clerical Medical, which she didn’t. So I think it’s most likely Mrs M received the annuity she was expecting.

Mrs M’s representatives have suggested Clerical Medical failed to provide market-leading quotes stating this is a breach of COBS 19.9.7. But I can see from the FCA’s rule book this requirement wasn’t in place in 2013, it was introduced in January 2019, so didn’t apply at the relevant time.

Mrs M disclosed in her complaint she has two health conditions (asthma and arthritis), but she wasn’t offered an enhanced annuity, which is a more generous annuity offered to people whose health or lifestyle shortens their life expectancy. Clerical Medical said Mrs M didn’t request a health questionnaire.

But I can see the November 2013 letter also said **“Do you smoke? Are you on any medication or do you have a medical condition? If so, you may be eligible for an enhanced annuity, which could pay you a much higher level of income”.** And it went on to suggest Mrs M make use of the Pension Advisory Service’s free online annuity planner.

In response to her complaint, Clerical Medical said at the time Mrs M took her benefits it only provided enhanced annuities through an IFA. But I think the letter made reasonably clear what Mrs M needed to do to see if her health conditions entitled her to a higher income, and the sources of help and guidance available to her.

I don’t know if Mrs M made use of the free resources provided by the Pensions Advisory Service or Money Advice Service. And I don’t know why she didn’t shop around, or whether she would have been entitled to an enhanced annuity with Clerical Medical or another provider. But from what I’ve seen, I’m satisfied she was given sufficient information to know that she didn’t need to purchase her annuity from Clerical Medical, and she had the right to shop around for a better deal if she wanted to. So I don’t uphold the complaint. As Clerical Medical wasn’t obliged to provide market leading quotes to Mrs M at the time she took her benefits, I’m not going ask it to provide them now.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 10 November 2023.

Sarah Milne
Ombudsman