

### The complaint

Miss K complains that Aviva Life & Pensions UK Limited, referred to as "Aviva", failed to notify her that her investment had ended.

She says Aviva moved her money into a Deposit Fund after maturity and charged her an annual fee without her consent.

### What happened

In October 2009, Aviva set up an investment in response to an application by Miss K, through her financial adviser. She was advised to invest £50,000 in the Aviva Guaranteed Fund for a term of five years.

Aviva says that in July 2014 it sent Miss K (and her adviser) anniversary letters, reminding her that the bond was coming to an end and that she needed to choose another fund to invest in. But Miss K maintains that she didn't receive the letter or any subsequent annual statements.

In due course, in October 2014 the bond matured. Because Aviva didn't receive any instructions from Miss K, it moved the money into the Deposit Fund.

Miss K says she didn't know anything about this until she called Aviva recently to enquire about the value of her investment. To put things right, she'd like Aviva to refund the Annual Management Charge (AMC) she's been paying since 2014.

Aviva didn't uphold the complaint. In summary, it said:

- In July 2014, it wrote to Miss K and her adviser, informing her that the fund was coming to an end. It gave her several options about what she could do and made clear what would happen if it didn't receive instructions from her. The letter also made clear that the Deposit Fund was unlikely to be suitable as a long-term home for her money.
- Because it didn't receive any instructions from her, on the anniversary of the fifth year, her money was placed in the Deposit Fund – where money is usually held in the short term, at an AMC of 1.25% of the value.
- Annual statements were sent to Miss K since October 2014, showing her the value of her bond and advising her to review her fund.
- Although Miss K says she didn't receive the anniversary letter or subsequent statements, they were all sent to her at the correct address.
- It also called Miss K twice on 18 August 2014, but had no luck getting through to her.
- The 'policy conditions' – under the heading Guaranteed Fund – advised that at the fifth anniversary, unless instructed otherwise, the value would be placed in its Deposit Fund. Therefore, in doing so, it hasn't acted outside of its conditions.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- On the face of the evidence, she's satisfied that Aviva wrote to Miss K in July 2014 making clear the options available to her upon the maturity of her bond.
- The anniversary letter also made clear that Miss K's money would be placed in the Deposit Fund – suitable as a short-term measure – if it didn't receive any instructions from her.
- Annual statements sent to Miss K thereafter, made clear that her money was being held in the 'deposit account' and that charges applied.
- Aviva sent Miss K correspondence over the years asking her to get in touch to discuss her account. Although Miss K feels it should've done more, she's unable to say that Aviva behaved unreasonably.
- The conditions – which Miss K agreed to before taking out the investment – made clear what would happen to her money invested in the Guaranteed Fund if it didn't receive any instructions from her.
- Having reviewed the call dated 5 March 2021, she can't say that the operative behaved unreasonably. In the circumstances, she's not persuaded that Aviva didn't tell her what was happening before this call.

Miss K disagreed with the investigator's view and asked for an ombudsman's decision. In summary, she maintains that she didn't receive the response, and the advisor who sold her the bond is no longer working at the (third-party) business.

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 Miss K says, I can't safely say that Aviva behaved unreasonably.

Before I explain why this is the case, I think it's important for me to note I very much recognise Miss K's strength of feeling about this matter. She has provided submissions to support the complaint, which I've read and considered carefully. However, I hope that she 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 courtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by her, and Aviva, 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 it's for me to decide, based on the available information I've been given, what's more likely than not to have happened.

Despite what Miss K says, I'm persuaded that Aviva sent her (and her adviser) the anniversary letter – dated July 2014 – informing her that the fund was coming to an end, and that she had to decide what to do with her money. I note that she was given the following options:

- Re-invest her money into the latest version of the Guaranteed Fund.
- Move her money into any other available fund.

- Take some, or all of her money, and reinvest the remainder

The letter also made clear that if it didn't hear back from Miss K by October 2014, Aviva would automatically move her money into the Deposit Fund. Given the term of her investment, I'm satisfied that Miss K was given enough time to decide what to do once the fund came to an end.

I appreciate Miss K says she didn't receive the anniversary letter. It's possible that there was an issue with the post – although I've seen no evidence that there was. But even if there was an issue with the post, I still can't hold Aviva responsible for the actions of a third-party postal service.

I've seen nothing to suggest that the letter wasn't sent. When a (third party) business provides evidence that a letter had been written, correctly addressed and sent, this service generally would accept that position. In this case I'm satisfied the anniversary letter was correctly addressed and sent to Miss K, to the same address Aviva had on file. And despite what Miss K says, I think it's unlikely that she wouldn't have received the anniversary letter and/or any of the numerous annual statements subsequently sent.

I'm also mindful that Aviva says it called Miss K, twice, in August 2014 – a month after sending the anniversary letter and two months before the end of the fund – but couldn't get through to her. In the circumstances, I don't think Aviva was reasonably required to do anymore.

Whilst I appreciate what Miss K says about obtaining her consent, on balance I'm satisfied that Aviva had already obtained her permission, by virtue of her agreement to the conditions of the investment, prior to her going ahead with it. So, in the circumstances I don't think Aviva needed to seek her 'consent' again – and hasn't done anything wrong by not doing so – before going ahead with the default action.

I note the 'Policy Conditions' under section seven, subsection (d), entitled 'Guaranteed Fund', state:

*"On the Guarantee Date, the Guaranteed Fund Units will be cancelled by the Company in exchange for an allocation of Units of the same value in such Funds, other than the Guaranteed Fund, as the Policyholder decides. If the Policyholder fails to nominate a Fund prior to the Guarantee Date, Units will be allocated in the Deposit Fund or such other Fund as the Company may reasonably decide."*

In this instance I'm also satisfied that the subsequent annual statements sent to Miss K made clear where her money was and what the charges were. If Miss K didn't read the statements containing this information, I can't blame Aviva for this.

I appreciate what Miss K says she thought would happen, but I've seen nothing to suggest that Aviva told her, or gave her the impression, that her money would simply roll over each year. So, in the circumstances I can't say that Miss K was misled about what might happen to her money at the end of her investment term.

In the circumstances, and on balance, I'm satisfied that Miss K ought reasonably to have known that her money would be held in the Deposit Fund if she didn't provide Aviva with instructions about what to do. Therefore, I can't say that Aviva has done anything wrong by doing what it said it would and charging an AMC for keeping her money in the Deposit Fund.

I appreciate Miss K will be thoroughly unhappy that I've reached the same conclusion as the investigator and I haven't given her what she wants. Whilst I appreciate her frustration, I'm afraid I'm unable to uphold this complaint and give her what she wants.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 22 February 2022.

Dara Islam  
**Ombudsman**