

The complaint

Mr L and Miss S complain that Aviva Life & Pensions UK Limited has unfairly cancelled their option to make cash withdrawals from their Multiplan whole of life policies.

What happened

Mr L and Miss S took out their policies in June 1991 through an independent financial adviser ('IFA'). They are reviewable unit-linked whole of life policies. The policies were originally offered by Equity and Law Life Assurance Society, then Friends Life, and finally Aviva took them over in 2017.

In 2004, 2006, 2010, 2012 and 2015, Mr L and Miss S took cash withdrawals from each policy. They approached Aviva in March and August 2020 for a further withdrawal, asking for a quotation. Whilst this appeared to be initially accepted, Aviva then told Mr L and Miss S that it couldn't facilitate their request and its call handler had made a mistake.

It said they could surrender the policies in full, but no further cash withdrawals could be made. This was because it had made a company decision to cease discretionary actions permitting alterations to policies that fell outside of set terms and conditions.

In August 2020, Aviva upheld the complaint. It said the later information Mr L and Miss S received regarding withdrawals was correct. But it had wrongly told them initially that it could facilitate their request and it was sorry about that.

Mr L and Miss S told Aviva they were still unhappy and brought the complaint to this service. In doing so, Miss S sent in a cross-referenced audit report for our consideration. I will not be setting that report out in full here given its length and volume of information. However, I thank Mr L and Miss S for their views and confirm I have read the report in its entirety. In summary, they said:

- Mr L was a financial adviser at the time, so he was aware of the type of the policy they'd been sold;
- they always knew they could take cash withdrawals providing £400 was retained in each policy as a minimum amount;
- this was told to them again in March 2020;
- it was only when they tried to follow that request through in August 2020 that Aviva changed its mind;
- they receive yearly policy reviews and at no time did they receive any communication as policyholders that Aviva had made this decision regarding cash withdrawals, or other amendments that Aviva had made regarding their policy;
- when Friends Life wrote to them in 2017 regarding the transfer of the policies, it said, *"there will be no change to your policy terms and conditions and any benefits will not change as a result of the transfers"*;
- their documentation, the 'Policy Schedule Multiplan Qualifying and Non-Qualifying Policy' includes the clause 'Option to Make Cash Withdrawals';
- they called Aviva in March 2021 about this but it now said those are the wrong terms and conditions;

- Friends Life seems to have made an error in 2014 changing each policy's status from qualifying to non-qualifying, but this isn't their fault;
- nonetheless, they still took a further withdrawal in 2015;
- they dispute there was a call handler error in August 2020 – instead after several days, a business decision was taken to no longer permit withdrawals and this is unreasonable;
- if Aviva persists with the argument, then the policies must no longer be fit for purpose and be mis-sold.

They went on to comment on all of the key pieces of evidence (such as calls and documents) provided to them in the subject access request.

An investigator reviewed the complaint. He concluded that the Financial Ombudsman Service couldn't interfere with Aviva's commercial decision in relation to cash withdrawals. He said he had not seen any part of the policy application that gave an option to select cash withdrawals. Though this was discretionarily allowed by Friends Life, that was a decision for it to take but it was not bound to allow the withdrawals.

As Aviva then took the policies over at a later date, it decided not to continue withdrawals from each policy. Whilst he appreciated Mr L and Miss S felt the policies no longer meet their needs, it was up to Aviva as to how it managed each policy.

However, he did note that Aviva removed the option from Mr L and Miss S without warning, and this had clearly caused them upset. He felt it should pay them £100 to account for that.

Aviva accepted the investigator's view. It agreed to pay the compensation proposed.

However, Mr L and Miss S did not agree with the outcome of the complaint. They said they remained unhappy that they will have to continue to pay policy premiums in order to maintain the life assurance cover when the investment savings have no value.

They went on to make further detailed submissions in a letter to our investigator of April 2022. Again, I will not be setting that letter out in full here for the reasons previously given though I have read it fully. In summary, they said they disagree with the view because:

- in March 2020 they had been told by Aviva they could withdraw cash in the same way as previous years;
- they remain of the view that the policies have been mis-sold to them, though they do not accept this was the fault of the IFA;
- they believe a corporate mistake has occurred in 1991, if each policy was set up on the basis that withdrawals could not actually be made;
- they were never provided the Multiplan Non-Qualifying Policy Rules and these were only issued after they'd complained to Aviva;
- but they believe their policies were applied for under different Multiplan Qualifying Policy rules;
- if their policies are non-qualifying due to Aviva's error, then if one of them passed away the other would be liable for taxation on any gain from the policy which was not what they wanted;
- they were never under any belief that the five previous cash withdrawals had operated on a discretionary basis;
- they challenge the conclusions of the investigator that they didn't select the cash withdrawal option under each policy at the point of sale;

- to the contrary they took out the policies out on the understanding that they could take cash withdrawals with the caveat that the sum assured would decrease and £400 had to be maintained in each policy;
- having gone through their policy application, there is no section on the application that they completed to select the option at the start of the policy for cash withdrawals;
- if the cash withdrawal benefit was never on the application to select and subsequently not included on their Policy Schedule and Policy Booklet how were they able to exercise this benefit and withdraw cash on several occasions?;
- they did not take these policies out on the basis of a discretionary arrangement;
- if a mistake had been made then Friends Life ought to have discovered this in 2004;
- they were able to exercise the benefit for 29 years fully believing their policies were performing to their expectations;
- therefore it came as a bombshell in August 2020 that they could no longer exercise the cash withdrawal benefit;
- they had no communication regarding this significant change from Aviva until the complaint was raised;
- Aviva's only effort to resolve the matter has been an apology;
- they feel that since the takeover from Friends Life in 2017, Aviva has continued to collect their policy premiums under false pretences;
- the false pretences are that in order to retain their life assurance they have to continue to pay the investment premiums which now have no value because they cannot be withdrawn without full surrender of each whole policy;
- the premiums will never exceed the sums assured so they believe this makes the investment element of each policy worthless;
- they have paid some £19,400 in policy premiums but the combined surrender value is only approximately £5,000;
- if they surrender the policy, they've lost £14,400 and their life cover;
- £100 is inappropriate compensation;
- the Financial Ombudsman Service website explain that *"if you've lost out financially, we'll look to put you back in the position you'd be in if the business hadn't got it wrong"*;
- they have identified (if they surrender the policies) a significant financial loss combined with the anxiety and frustration since 2020;
- so, £100, which is equivalent of one month's premiums to Aviva is unacceptable to compensate their situation;
- if they did raise a mis-sale complaint, the IFA has ceased trading;
- at the start of the process with this service, they were asked what they wanted as a satisfactory outcome;
- what they want is their right to continue each policy with all the benefits they believed they purchased at the point of sale in 1991 – meaning they can continue to take cash withdrawals;
- it should make no difference to Aviva as doing so reduces their sums assured;
- alternatively, they want to be able to part-surrender the policies for the £5,000.00 investment element, switch to life cover only and retain the current reduced sums assured with the accidental benefit – meaning they pay agreed and adjusted reduced premiums only on the retained life assurance.

After they had been given an opportunity to provide their view in full, Mr L and Miss S said they wanted the complaint to be passed to an ombudsman.

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.

I appreciate the effort Miss S has undertaken in terms of supplying evidence and compiling reports for this service. But, I won't be addressing every individual submission Miss S and Mr L have made. I have read them but I am not required to comment on each point. My remit is to make findings on what I believe to be fair and reasonable to both parties in the circumstances. I will therefore set out my reasoning for what I consider are the central issues in this complaint as I see them, based on the file before me.

Having looked at everything, I also believe this complaint should be upheld and that compensation is due to Mr L and Miss S for the upset they've been caused. I have also reached the same view as our investigator that Aviva otherwise is not obliged to permit further cash withdrawals under the policy. I'll explain my reasons for that below.

Firstly, Mr L and Miss S have explained how they believe they took out qualifying policies – that is correct. What that means is any final amount paid on maturity is paid tax free to the policyholder. There are specific requirements set out by HM Revenue & Customs that policies must comply with in order to be qualifying and these policies have limited flexibility.

The policies became non-qualifying in 2014. In their final response to our investigator, Mr L and Miss S raised concerns about that. But this wasn't part of the complaint to Aviva and I will not be making findings about the change. If required, Mr L and Miss S would need to put this matter to Aviva if that is now a new, separate complaint.

The fact the Multiplans can be taken out on both qualifying and non-qualifying bases means there are two distinct sets of terms and conditions – and this is where some confusion has been caused during the life of the policies. Only the non-qualifying policies have a provision in the terms at section 5 entitled "*Option to Make Cash Withdrawals*".

Mr L and Miss S never had this option in their terms and conditions. They were given qualifying policy terms and conditions and Miss S supplied those to our service when forwarding the complaint. As noted, qualifying policies have less flexibility than non-qualifying ones given the impact on their complex tax arrangements. Despite this, the predecessor businesses allowed the option to be exercised on the four occasions. But, neither business was obliged to do so.

The terms and conditions are set from the outset – so even though the policies have since become non-qualifying, the original terms for the qualifying policy apply. But even if I were to disregard that, I still don't believe Mr L and Miss S ever had this option set up for their policies.

Both sets of policy terms must be read alongside the policy schedules, setting out which additional options were selected under the 'subsidiary benefits' section. And while some benefits such as the accidental death benefit were chosen, the option to make cash withdrawals was not. These selections were made with the IFA at the outset. If Mr L and Miss S hold concerns about the sale of the policies, again that forms the subject of a separate complaint to that business (or the Financial Services Compensation Scheme).

I appreciate how frustrating matters have been for Mr L and Miss S as they only realised this option was not open to them once Aviva made a decision to stop allowing discretionary arrangements outside of policy terms. Though I believe Aviva ought to have acted differently in 2020 with regards to the communication and information it gave to Mr L and Miss S, I cannot uphold the complaint about the right to make the withdrawals.

What this service does is consider if a business has treated a customer unfairly because of

actions or inactions. And if it has done so, we then go on to consider what ought to be done to put the mistake(s) right.

The right outcome here is not to perpetuate a mistaken arrangement for cash withdrawals when it was 1) never a feature of a qualifying policy and 2) not an option selected by either Mr L or Miss S at the time if the policies were actually non-qualifying instead. Whilst withdrawals have been a benefit that Equity and Law and Friends Life allowed, it did so beyond any binding terms and conditions for the policies. I can't hold Aviva liable for the same arrangement and it is entitled to make legitimate commercial judgments about that.

I therefore do not believe I should order Aviva to reinstate the previous discretionary arrangement. However, I do believe that it has made a number of mistakes in relation to Mr L and Miss S's request and communications.

Putting things right

Aviva's actions have caused a great deal of confusion and upset for Mr L and Miss S.

Firstly, the mistake went beyond the matters of August 2020. A query was originally made in March 2020 and at that time Mr L and Miss S were wrongly told they could make their withdrawals. They relied on this based on the actions of the predecessor businesses and when they contacted Aviva again in August 2020 they were initially led to believe the withdrawals were being processed.

Additionally, Aviva sent Mr L and Miss S the wrong policy terms in March 2021, leading to further upset and distress for them given the matter is already confusing. That action perpetuated their upset.

I know Miss S feels that as she has spent many hours compiling evidence and reports, this ought to be reflected in any award I make. But our approach here is not to make a specific award for someone's time. And it was Miss S's choice to provide her chosen level of detail. We are an informal dispute resolution service; we don't require legal submissions from complainants and we're not set up to fine or punish businesses. Our role is to reach a fair and reasonable outcome – and where required in the event of distress or upset, make an award that recognises the impact a business's mistake had on complainants.

I think Aviva's mistakes have caused considerable worry and distress to Mr L and Miss S for several months. I therefore believe an award of £500 is appropriate in the circumstances.

My final decision

I uphold this complaint in part. Whilst I do not believe that Aviva Life & Pensions UK Limited unfairly cancelled Mr L and Miss S's option to make cash withdrawals from their Multiplan whole of life policies, I do find its actions have caused them notable upset.

I direct Aviva Life & Pensions UK Limited to make the payment set out above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L and Miss S to accept or reject my decision before 6 July 2022.

Jo Storey
Ombudsman