

The complaint

The estate of Mrs K complains that Aviva Life & Pensions UK Limited mis-sold a whole of life plan to the late Mrs K in 1992.

Aviva consented to the complaint being considered by this service.

The estate is represented by Mr K, the late Mrs K's son.

What happened

Mrs K applied for the plan via an advert in February 1992. Her application was accepted – for a sum assured of £960 at a monthly premium of £5. The sale was not advised. Sadly Mrs K passed away last year. On realising that his mother had paid far more into the plan than she would receive, Mr K complained on behalf of the estate.

Our investigator recommended that the complaint should be upheld. She didn't find that Mrs K was warned that there was a risk that she could pay more into the plan than the sum assured.

Aviva disagreed that Mrs K would have been unaware of the risks. Additionally it felt that our service was aware of how these policies worked and of the warnings given on the literature.

As no agreement has been reached the matter has been passed to me to determine.

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.

As Mrs K didn't receive any advice when taking out the plan, Aviva had a duty to ensure that the information it provided was clear, fair and not misleading.

Aviva was able to provide a copy of the original application form completed by Mrs K. It does appear a second page might be missing, although Aviva haven't confirmed this or been able to provide a second page. This isn't surprising given the passage of time.

The application form is brief and gives no warning as to the possibility that the plan may cost more than the sum assured. Accordingly I've looked very carefully at the copy documentation that Mrs K was sent when the plan started to see if this risk was drawn to her attention.

The policy document shows the monthly premium of £5, explains the circumstances in which the sum assured becomes payable, and that premiums are payable for the duration of the plan. It does contain a surrender illustration, showing Mrs K what she might get back if she were to surrender the plan early. But there was no warning that she could pay more into the plan than the sum assured.

Aviva submits that this service knows how these plan work – which is of course true. But that's not the point here. It needed to ensure that the documentation given to Mrs K was clear, fair and not misleading when sold. And to be fair I find that Aviva needed to set out both the *risks* and *benefits* of the plan.

I do take Aviva's point that a simple mathematical calculation would have demonstrated to Mrs K how long she would need to survive in order for the plan to be cost effective for her. This wouldn't have been complicated as both the premium and sum assured were fixed.

However I don't find it's reasonable to have expected Mrs K to calculate the risk of paying in more than the sum assured. It would have been simple to add a warning – and this is something we do often see on policies of this type. But there is no evidence that there was any warning given here.

It follows that I can't be sure that the policy was sold in accordance with the requirements at the time. Specifically, I don't find that the documentation was fair in that there is no evidence that a risk warning was given. I can't say what Mrs K would have done had a warning been present, but one likely possibility is that she wouldn't have taken the policy and done something else with the money she paid.

My final decision

For the reason given above my final decision is that I uphold this complaint.

I require Aviva Life & Pensions UK Limited to refund the estate of Mrs K the premiums paid adding simple interest at 8% from the date each premium was paid to the date of settlement. If the sum assured has been paid, this sum should be deducted from the refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs K to accept or reject my decision before 16 June 2022.

Lindsey Woloski
Ombudsman