

The complaint

Mr F complains that Aviva Life & Pensions UK Limited sent him surrender values and statements on his whole of life policies for many years, but now say that the policies were assigned to a pension policy in 1989.

What happened

Mr F took out two whole of life policies with a company that has now been acquired by Aviva. When Mr F tried to surrender the policies in 2007, Aviva wrote and told him the policies had been assigned to the Trustees of a staff pension scheme and that later the value of the policies had been included a transfer to a personal pension plan.

Mr F and his independent financial adviser (IFA) continued to receive regular statements from Aviva for the two policies, and in 2020 Mr F again requested that they be surrendered. Aviva wrote to Mr F and explained why he was unable to surrender the policies. Mr F complained to Aviva who apologised that he was still receiving statements on the policies he no longer owned. Aviva sent Mr F a cheque for £515 to reflect the distress and inconvenience this matter had caused him. Mr F didn't accept the remedy and brought his complaint to the Financial Ombudsman Service.

One of our Investigators looked into things and thought that Aviva's ongoing errors in providing Mr F with statements and surrender illustrations on the two policies had a significant impact on Mr F. The Investigator didn't think that the £515 compensation offered by Aviva reflected the impact on Mr F and thought that Aviva should pay Mr F a further £500.

Aviva didn't agree with the Investigator and thought the remedy was too high and asked that an Ombudsman decides the complaint.

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.

There is no dispute that Aviva continued to send Mr F regular statements on the two whole of life policies, but I'm satisfied the whole of life policies were made paid-up and assigned to the Trustees of a staff pension scheme. It's not clear exactly when this happened, but this is supported by a letter from business administering the staff pension scheme to Mr F on 15 August 1989. The letter said, "*{the transfer value of the staff pension scheme} ..includes the value of your whole of life policies issued under the old staff life assurance scheme (which were made paid-up for a reduced sum around when you left service) and the value of your protected rights...*". In addition to this I've seen a notification that the two policies were assigned to the Trustees of the staff pension scheme. And I've seen a policy statement dated 25 February 1998 to an IFA showing that the policies were held in the name of Trustees of {the staff pension scheme} on Mr F.

This means that it wouldn't be possible for Mr F to surrender the policies without the Trustees of the staff pension scheme confirming they had no further interest in them. I can

see that when Mr F first asked Aviva to surrender the policies in 2007 it asked him to provide confirmation that the Trustees of the staff pension scheme had no further interest in the policies, but Mr F didn't provide this.

There is some doubt about when the policies were transferred to the Trustees of the staff pension scheme, but I'm satisfied they were. And, regardless of when this happened, it seems more likely than not the benefits of the whole of life policies were included in the transfer value to the personal pension provider. Although the intention of the Trustees was to surrender the policies, as they couldn't re-assign them to a new personal pension provider, it's more likely than not this didn't happen until after Mr F's fund had already been transferred. But this doesn't mean that Mr F retained the value or the benefits of the policies as they were assigned to the Trustees of the staff pension scheme in lieu of the transfer value it had paid out.

Mr F has said that he was confused; on the one-hand he received letters telling him the policies had been assigned to the Trustees of the staff pension scheme, but on the other-hand he continued to receive statements with the sum assured and surrender values. This would have been very confusing for Mr F and indeed his IFA. I appreciate Mr F says he didn't receive the explanation letter dated 18 September 2007 from Aviva, as there was some confusion over his current address, but it went on to explain the policies had been assigned to the Trustees of the staff pension scheme and apologised that he'd still been receiving details of the policies. This may have helped Mr F understand what had happened.

However, regardless of the 2007 apology and explanation, Aviva continued to send regular statements on the two whole of life policies to Mr F and his IFA. These statements told Mr F what the sum assured and what the fund value was on each policy and there was nothing in the statements that would have led Mr F to believe he wasn't the policy holder. So, between 2007 and 2020, it seems reasonable to me that Mr F would have thought he had some life cover in place, and that the policies had a surrender value.

Mr F says that recent life events caused him to consider whether he had sufficient life cover and that finding out that the policies were no longer in existence has left him concerned about how he could pay for his funeral. I've carefully considered whether the apology and £515 Aviva offered Mr F was fair and reasonable, but I've concluded that it doesn't take into account that Mr F is now in his early seventies and relacing the life cover Aviva told him he still had would be expensive. I've no doubt that the letters Aviva continued to send Mr F persuaded him he had life cover in place and that this would have provided him with some comfort which turned out to be mis-placed. Mr F is now in his early seventies and I'm satisfied from his testimony and complaint that the cumulative effect of the errors caused him a lot of distress. And, I think it's likely that if these letters hadn't been sent, over a period of 13 years, Mr F would have been able to consider alternative arrangements when he was younger.

I've decided that Aviva assigned the whole of life policies to the Trustees of the staff pension scheme, and that the value of these policies was more likely than not included in the transfer value to a personal pension plan. However, although Aviva apologised and offered Mr F £515 for the distress and inconvenience the letters between 2007 and 2020 had caused him, I don't think this is fair and reasonable in the circumstances of this case. Aviva says the £515 remedy Mr F rejected was already one-third of the last surrender values it sent Mr F. That may be the case, but I don't consider the distress and inconvenience Mr F experienced should be related to the non-existent surrender value or indeed be formula based. Instead, I've taken into account Mr F's age and that Aviva had consistently written to him over a 13-year period to provide details of the level of life cover he had in place. In this regard, I think the impact on Mr F is greater than it would likely be for someone of a much younger age and who could more easily obtain alternative life cover. So, I've decided Aviva should pay Mr F

the sum of £500 in addition to the £515 it had previously offered. For clarity, Aviva should pay Mr F £1,015.

My final decision

I've decided that Aviva Life & Pensions UK Limited should pay Mr F the sum of £1,015 to remedy the distress and inconvenience caused to him when it continued to send statements confirming he still had the whole of life policies in his name.

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

Paul Lawton
Ombudsman