DRN-3672383

The complaint

Mr W has complained about Aviva Life & Pensions UK Limited (Aviva) in relation to his pension policy and the life insurance attached to it. He is unhappy that the life cover ended before his deferred retirement date as he was told by Aviva that as long as he kept paying the premiums the life insurance would continue until he turned 75 if that was what he wanted.

What happened

Mr W took out a pension with life insurance attached to it in 1998 from a business that Aviva is now responsible for.

The life insurance provided him with a sum assured of £100,000 and ran until he turned age 60, March 2017.

Mr W regularly paid into the policy.

In 2014 he decided to defer his retirement until March 2022. The business at the time (now Aviva) agreed to this and processed the change. It confirmed the amendments in a letter to Mr W dated 15 October 2014. This letter set out that the revised selected retirement date was age 65. It stated that *except as stated, the terms and conditions of the contract remain unchanged.*

It also included an illustration of the policy where it set out that the death benefit of £100,000 would be paid out if death occurred before the *retirement date*.

In 2020 Mr W received a statement for the pension and noticed that it also stated the life cover had ended in 2017.

Mr W complained to Aviva saying that before deferring his retirement date he checked with Aviva that the life protection could also be extended, and he was told it could. He's also explained that he was told this again in 2018 verbally by Aviva and also felt the letters Aviva had sent him made no mention of the life cover not being extended. He also queried where his premiums had been going if not into the life protection. And given he had maintained the premiums for all this time he wanted the life protection reinstated.

When Aviva looked into his complaint it explained that the life protection could never be extended due to the age at the end being underwritten from the outset. So, the policy couldn't be reinstated and set up to end when Mr W retired in March 2022. However, Aviva did acknowledge that errors had occurred. It found that when the original retirement date of March 2017 arrived the life cover was not removed. It should have ceased, and this should have been recorded on its system. It also found that on a call Mr W made to Aviva in 2017 the telephone adviser had confirmed that the £100,000 life cover on the policy would remain in place as long as Mr W kept paying the premiums. And another call in January 2018 where a different Aviva telephone adviser confirmed to Mr W the £100,000 life cover benefit ran until his deferred retirement date in March 2022.

It did however also confirm that the charge for life cover was collected until June 2020 at which point any further payments received from Mr W were reversed and the charges were reimbursed into to plan.

So, in light of this as well as giving the wrong information to Mr W's financial adviser Aviva paid Mr W £150.

As Mr W was unhappy with the outcome Aviva had reached, he referred his complaint to this Service where it was assessed by one of our investigators. While she agreed that Aviva had given Mr W the wrong information, she felt the £150 that Aviva had paid him was sufficient to cover this mistake.

I issue provisional findings on this complaint on 11 August 2022 and set out why I felt the complaint should be upheld. An extract is below and forms part of this decision:

There is no argument that Aviva gave Mr W wrong information about the policy on a number of occasions. But in my view the incorrect information Aviva provided Mr W is significant. Not only did Aviva send paperwork which stated the life protection would continue but Mr W was also told this on two separate occasions, as was his financial adviser. So essentially over a number of years Aviva told and assured Mr W that the life protection part of the pension was still in place and would cease only when he retired at his deferred date of March 2022. In my view, this isn't good enough and I would expect a more accurate service from a professional provider.

Aviva has said that there was legislation brought in with the 2007 Financial Bill that resulted in member contributions to personal pension term assurance policies, including life cover set up in conjunction with a personal policy, no longer receiving tax relief on contributions made on or after 6 August 2007 in certain situations. Aviva has told us that this affected all of its individual personal pension products, as the life cover under its pension products were set up as a separate contract. Aviva's personal pension scheme rules don't allow policyholders to pay contributions which don't qualify for tax relief. And one of these situations was if the term of the life cover was longer than the period specified on the application. So, on any personal pension if the policyholder decided to change or extend their retirement date the life cover would cease at the original retirement date.

However while this may be the case and I appreciate Aviva's decision to not extend the life policy was born out of regulation there is no reason why Mr W would have known about this unless Aviva had made him aware (which it didn't). So, this argument in my view is flawed and isn't enough to argue that Mr W should have known this despite being told different on several occasions.

In deciding the right way to redress this situation I must consider a number of issues. Firstly, its reasonable the life protection part of the pension couldn't be reinstated. And given Mr W's deferred end date has now passed there would be no point in this happening even if it could be.

Mr W has said that he wouldn't have taken the policy in the first place had it not had the life cover. Given the pension amount was small it is likely he did only take it for the protection. But life cover was always a part of the policy from the outset and until 2017 the policy gave him what he wanted. So, I don't think in reality there is a question over whether Mr W would have taken the policy out in the first place.

I can't know what Mr W would have done if he had known at the time the life cover couldn't be extended. There is a possibility that he may have decided not to defer his retirement age. But equally he may have continued with deferred his retirement and decided to take out *another life protection policy to give him the cover he needed for the extra five years.*

However, he didn't take another policy in 2017 as he thought the life cover would also be extended. And when he did discover the life cover hadn't been extended in 2020 he didn't take another policy because of costs and because he wanted to wait for this Service to conclude our investigation. This isn't unreasonable. Furthermore, Mr W has now reached and in fact surpassed his retirement date. So, if no errors had occurred neither the pension or the protection would still be in place at this moment of time.

Therefore, it would seem that Mr W hasn't actually lost out financially due to the error Aviva has made. So, the redress needs to be representative of the error - the lack of care in Aviva's service provided to Mr W as well as the distress and inconvenience Mr W has suffered as a result. So to this end I don't think the amount Aviva had paid is sufficient and I am currently of the view this amount should be increased by £350 making the total of £500 being paid to Mr W in recognition of the error.

In response to these provisional findings Aviva replied accepting the findings with no further comments.

Mr W replied saying that he was expecting a higher level of redress considering the stress and worry this has caused him and his family knowing these was no life cover for such a long period.

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 Aviva hasn't defended its position any further, I have no reason to depart from my provisional findings.

I appreciate Mr W has said he wants a higher level of redress but in making any decision I must remain fair to both parties. Any award I make is not punitive and must be proportionate to the distress and/or error caused. In this case I can understand how this situation would have been very worrying for Mr W and his family but he only found out about the life cover problem in 2020 when he was only a few months away from retiring (when the policy would have ended). So in reality he would have only have been worrying about this for a matter of months had the issue been able to be resolved immediately. Also, he chose to not take out further cover which would have mitigated the worry.

So because of that, I remain of the view that Aviva must pay a further £350 to Mr W for the error it made and the distress and inconvenience caused by it.

Putting things right

Aviva Life & Pensions UK Limited must pay Mr W a further £350 in recognition of the impact its errors have had on him.

My final decision

My final decision is that I uphold this complaint and direct Aviva Life & Pensions UK Limited to pay Mr W redress as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 27 September 2022.

Ayshea Khan
Ombudsman