DRN-4020987

The complaint

Mr C complains that Aviva Life & Pensions UK Limited ('Aviva') has failed to provide a correct valuation for his whole of life policy, which he has held since 1974.

What happened

Mr C's policy was taken out on 18 June 1974 through Provident Life. He says that both himself and his wife took out whole of life policies at the same time for funeral costs and expenses for their surviving partner and family. Mr C says they were set up on a with profits basis. Mr C's policy had a £6,000 sum assured and a £6.10 monthly premium, with an additional 26p supplement for mortgage cover. Premiums were payable up to 2011 – when Mr C would turn 65. However, the policy was made "paid up" after Mr C ceased paying the policy premiums from 18 October 1981.

In 2000, Mr C's policy was transferred to Winterthur Life, and thereafter acquired by Aviva.

In 2004, Mr C's wife sadly passed away. Mr C says her policy paid out £22,000.

On 10 November 2021, Aviva sent Mr C a letter to remind him that the policy was still active. By return letter, Mr C enquired with Aviva about placing his policy into trust. He also asked for a copy of the policy documentation and for the policy's cash value.

On 1 December 2021, Aviva sent Mr C further information about how he could complete a relevant deed and return it to Aviva with one of a number of specific types of evidence of identification. In that letter, Aviva told Mr C that the policy's surrender value was £770.61.

On 5 February 2022, Aviva confirmed to Mr C that it had no policy documentation on record from the time of the sale with Provident Life.

In March 2022, Mr C complained. He told Aviva he was unhappy that it hadn't retained the original agreement he had signed with Friends Provident.

Aviva rejected the complaint. It said the policy's sum assured had been reduced to £1,330 on 18 October 1981, since the premiums stopped being paid at that date. This was undertaken in accordance with the policy terms. Aviva sent a copy of the general policy terms to Mr C. It explained how the surrender value would have been higher if Mr C had continued paying the policy premiums as required up to age 65.

Mr C then sent further correspondence to Aviva's Chief Executive Officer ('CEO'). Aviva then sent Mr C a further letter on 12 April 2022 to explain its position further. It said the policy set up on 18 June 1974 was a non-profit whole of life policy. It had no investment element but was designed to pay £6,000 to Mr C's estate in the event he passed away – subject to the payment of premiums.

Aviva explained how the policy would also accrue a surrender value as premiums were paid up until age 65, however, Mr C ceased paying the policy premiums in 1981 when he was aged 34. At that time, the policy's status became paid up with no further premiums due.

Mr C disagreed and he sent further correspondence to Aviva's CEO setting out his unhappiness at the matter.

On 16 June 2022, Aviva told Mr C that its CEO could not respond personally to his further complaint correspondence. It said it had thoroughly reviewed the matter and could comment no further. It confirmed it would conduct any communications it had with the Financial Ombudsman Service in an open and honest manner.

Thereafter, Mr C brought his complaint to this service. He provided a complete letter explaining his concerns in detail. In summary, he set out that:

- given his current age (being in his late 70's), he has no further time to waste on this complaint;
- he concludes that Aviva took on the policies without the requisite legal documentation and he should not be at fault for that;
- in any event, he contends that Aviva must have set a financial sum aside to compensate him and others in his position;
- he has made many requests for evidence of policy documentation from the time of the sale but Aviva cannot provide it;
- it has to be tantamount to fraud to not have retained documentation;
- inflation has to be factored into the premium payments alone – which would equate to an excess of £10,000;
- the current valuation cannot be correct;
- stock market gains for with profit policies in the 1980's and 1990's were around some 15% per annum;
- if the premiums paid had been merely invested in the FTSE 100 his policy would be worth £67,838;
- he disputes that the policy terms Aviva has 'found' apply to him;
- without the signed contract, Aviva cannot confirm a value to the policy's sum assured or death benefit;
- the policy terms Aviva has provided are absent in regards to mortgage protection so they cannot be his terms and conditions;
- he will only settle the matter for the inflation-adjusted sum he has calculated of £67,838;
- this has now increased to £74,838 in the time Aviva has taken to review the complaint and since the matter has had to be brought to the Financial Ombudsman Service.

An investigator from this service reviewed the complaint but she did not think it ought to succeed. She said she couldn't see any evidence that Aviva had administered the policy incorrectly or that it ought to have operated on a with profits basis. Further, though there was an absence of paperwork from the time of the sale, she didn't believe that this meant the policy was likely with profits, when the other evidence suggested it was a non-profit policy.

Our investigator also looked carefully at how the policy premium had been calculated and she concluded this was indicative that the policy was non-profit based. Though the premium differed by six pence, she believed it would have been double if the policy had been with-profits from the outset, and the policy terms determined this. She also noted that no statements were sent to Mr C by either Provident Life or Aviva – which would not be the case if the policy was with profits, as annual statements would have otherwise been issued.

Overall, she felt that the £1,300 sum assured was consistent with Mr C having paid seven years (or 20%) of premiums, as it was just over 20% of the original sum assured. So, she

could not ask Aviva to offer the higher sum assured that Mr C had asked for.

In response to our investigator, Mr C firstly made a subject access request ('SAR') for all of the information held on his file at the Financial Ombudsman Service. That matter has been responded to within the required timescales and dealt with independently of this decision.

Secondly, in relation to the complaint, he asked for it to be referred to an ombudsman. He supplied a written letter explaining why he remained of the view that the Aviva policy was not the policy he took out in 1974, because a) the premiums he paid do not match the premiums for the policy; b) the policy does not have a mortgage protection supplement; and c) the policy details were for a different period and were not valid for when his policy began.

I have read Mr C's letter in full, and so I shan't repeat it verbatim here. In summary, Mr C said:

- the solution he seeks is a return of the premiums he paid, at an inflation adjusted value (equal to £10,262.58 in 2022);
- to this, Aviva ought to consider a proportionate refund of what that sum would be if it had been invested in the FTSE 100 since 1984 – so a £74,838 return;
- as he paid 20% of the total premium payment period, the share would equal £14,967.70;
- those two amounts together (the premium refund plus the lost investment return) total £25,230.18 and this is what Aviva ought to provide as settlement redress to him now;
- he feels that our investigator tried to help Aviva by creating a fictional policy, but that policy had no mortgage protection cover and an incorrect date of commencement – this served to make it illegitimate;
- it cannot be assumed he took out a fake policy, and to do so would constitute a maladministration by the Financial Ombudsman Service;
- there is no evidence to support the notion that he would have agreed to this fictionalised policy;
- both he and the investigator have proven that the policy terms Aviva has supplied are wrong so, it can only be assumed that Aviva is acting with fraudulent intent;
- it is for this reason he pursued a SAR, so he can establish why Aviva has tried to defraud him by supplying incorrect evidence to this service;
- the ombudsman cannot rely upon the wrong policy and it would be unfair to do so;
- the investigator made no finding of fact in support of the wrong policy, only against it;
- the fact he agreed to mortgage protection cover must have meant the sum assured trebled, as it had to cover the value of a mortgage;
- the total funds held by Aviva after half a century must amount to a huge cash pot;
- when Aviva took on the asset from Provident Life it must have undertaken due diligence;
- it had to have set aside a sum of money for policies such as this, which had no evidence of their original contracts;
- otherwise it is for Aviva to write off any cost as negligent management – but it should not be withheld from the customer;
- he also believes that the Financial Conduct Authority ('FCA') ought to be notified as to Aviva's actions;
- he is an elderly vulnerable customer and he believes Aviva has been caught out trying to perpetrate a fraud, and is burdening this service by denying it;
- his family have referred this matter to their local MP and consumer champion services undertaken by the print media;
- he hopes extra compensation can be considered given his age and the fact this policy was needed for funeral expenses – Aviva should not be permitted to trample on the elderly by undertaking financial abuse.

After Mr C received the information relating to his subject access request, he sent a further letter of appeal. He said:

- he was shocked to discover that the only evidence Aviva relies upon is two screenshots;
- one of the screenshots has been doctored;
- Aviva has blanked out the policy information and over-typed the screenshot with fake details;
- it confirmed that Aviva had not:
    - sent an introductory letter;
    - issued any policy information;
    - contacted him about the policy being paid up;
- the second screenshot merely sets out a life policy with an incorrect premium, absence of a mortgage protection supplement and an incorrect time frame;
- it has to be impossible that this is his policy;
- all of the evidence is missing and Aviva has acted fraudulently;
- he therefore requires payment of the redress and compensation that he previously set out;
- he also gives consent for his MP to discuss the case with senior staff at this service.

Mr C also sent a copy of an article from a newspaper that he has contacted regarding this complaint. He said that the article set out the situation of a customer that had suffered delays with refusal to pay a claim for their late mother regarding a policy taken out in 1993. Mr C said he felt this case was similar as it showed a policy of some 30-years being avoided by a financial institution. He said that it was clearly ridiculous that Aviva has claimed to have lost his policy, which in his view, could have made over £250,000 in 49 years.

Aviva did not have any other comments to make. The matter was thereafter referred for an ombudsman to consider afresh.

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 thank the parties for their patience whilst this matter awaited an ombudsman's decision. I was also sorry to learn Mr C had been unwell in recent years and I send him my best wishes. I appreciate how strongly Mr C feels about the matter, and whilst I am mindful of his frustrations, I cannot uphold a complaint merely because of my empathy for a complainant; I must be fair to both parties in a complaint. Having reviewed everything carefully, I am also of the view that this complaint cannot succeed. I'll explain my reasons for that below.

I've included a detailed chronology of the complaint in the 'what happened' section of this decision. However, I won't be addressing every individual submission Mr C has made or giving my view on every point of contention. I have included the background detail in order to recognise the depth of Mr C's ongoing concerns about this complaint.

We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

The Financial Ombudsman Service provides informal dispute resolution. My remit is to make findings on what I believe to be fair and reasonable to both parties in the circumstances and

this does not follow a prescribed format. Instead, I will set out my reasons for my findings on what I consider to be the central issues in this complaint, based on the evidence before me.

In reaching my decision, Mr C has referenced an article in the print media which he feels relates to this complaint. However, I disagree. No two cases are factually identical; that the media may have looked into a complaint with perceived similar circumstances does not set a precedent nor does it compel me to reach the same conclusion.

The crux of Mr C's complaint is the valuation of his whole of life policy and the absence of a signed contract between himself and Provident Life from 1974. Mr C feels that Aviva has unfairly/unlawfully relied on general product terms to conceal the true value of his policy.

It's important for me to point out that we do not act in the capacity of a regulator. That means our decisions don't ordinarily interfere in how a business may conduct its operations or exercise what may be commercial judgment on the provision of a particular service. That remit falls to the FCA. I note that because Mr C has asked us to refer this issue to the FCA – and I do not believe that to be necessary in order for me to reach a determination in the matter. Further, I cannot enforce rules or regulations around the retention of policy documentation from 1974 in my role as an ombudsman.

Whilst Mr C is entitled to form his own view on the reasonableness of Aviva's assessment of the value of his whole of life policy, I must also do the same. And from an objective standpoint, I do not consider that Aviva has been unfair or unreasonable in providing the valuation (or its basis upon the policy information it does have) to Mr C.

Unfortunately, because of the passage of time and the fact it acquired the policy from a different business, Aviva has no record of the sale of the policy from 1974. Though Mr C has suggested I ought to find otherwise, I disagree that I must uphold this complaint because of the absence of these records. The sale took place almost 49 years ago. I recognise it is frustrating for Mr C that Provident Life and Winterthur Life before it did not provide the paperwork he signed in 1974 upon transfer to Aviva. However, that is not reason of itself for me to uphold this complaint.

I say that because there is some evidence available for me to consider; this in the form of recollections from Mr C, electronic records from Aviva and a copy of the 'Provident Life Whole Life Assurance and Family Income Benefit' policy conditions leaflet from January 1974. Where there is conflicting evidence, such as between the documentary evidence and what is being said by the parties now, I will determine what I believe is most likely on the balance of probabilities.

What isn't disputed by either party is that Mr C's policy provided whole of life assurance, which was a policy set up to offer payment of the agreed sum assured (£6,000) on death, whenever that should occur – providing premiums were paid up to a chosen maximum age. In this case, the policy had limited payment terms to age 55, 60 or 65, and Mr C's policy was set at 65. It is also not disputed that Mr C ceased paying the £6.10 monthly policy premium for the cover in 1981 – at which time he had paid approximately £536.80 in policy premiums.

Having looked at the general policy conditions leaflet from Provident Life dated January 1974, I am satisfied that Provident Life was offering non-reviewable whole of life policies with limited payment terms and two main variables – whether the policy was with profits or non-profit. For the avoidance of doubt, I see no objective reason as to why these policy conditions should be disregarded. They relate to the named policy Mr C took out and are confirmed as being in place by Provident Life at the time the policy began in 1974. I therefore believe, on balance, that they apply here and are the likely conditions for this type of policy.

It is also worth noting that I have not reached any conclusion that the two screenshots issued by Aviva relating to its records of Mr C's cover have been doctored. I have not seen any evidence to that effect, and I do not believe that an objective view of the screenshots leads me to believe they are falsified, as Mr C has suggested.

The policy conditions for the Provident Life Whole Life Assurance make clear that if the applicant wanted to engage in a Provident Life profit share, the premium would be higher. They say:

> "***With Profits Policies***
> *For a higher premium, the policy may be taken with the right to share in profits. Bonuses are declared as reversionary additions to the sum assured payable on death. Once declared, bonuses are as firm an obligation of the Company as the sum assured itself.*"

The terms and conditions then go on to provide two calculation tables for the applicant to work out their policy premium for each £1,000 of the sum assured based on their age at their next birthday and the age the policy will end (55, 60 or 65). One table gives the cost of a 'with profits' policy and the other, 'without profits'.

Mr C's policy premium as confirmed on Aviva's records of £6.10 (absent of the additional 26p mortgage cover which was not part of the main policy terms) broadly equated with the without profits table. For someone Mr C's age in 1974 seeking cover to age 65, the monthly instalment premiums for each sum assured were £1.11. Contrastingly, a with profits policy had monthly instalment premiums of £2.32.

The conditions tell the applicant how to calculate the premium for their chosen sum assured, with reductions of 5p, 10p, 15p and 20p for each month depending on the amount of the sum assured. In Mr C's case, a sum assured of £4,000 to £7,999 would have a 10p reduction. Finally, a policy charge of either 10p or 30p wad added (for policies of £2,500 or more the charge was 10p).

For the without profits calculation, the premium each month should be:

- £1.11 for each £1,000 of cover less the 10p reduction to £1.01;
- the premium is multiplied by six as Mr C wanted £6,000 of cover, totalling £6.06;
- the 10p policy charge is added, giving a total premium of £6.16.

It is not known why the premium came in at £6.10 but I am satisfied that this is proximate to the actual premium paid and commensurate with the without profits calculation.

If the same calculation was undertaken with the with profits instalment premiums, the calculation would be:

- £2.37 for each £1,000 of cover less the 10p reduction to £2.27;
- the premium is multiplied by six as Mr C wanted £6,000 of cover, totalling £13.62
- The 10p policy charge is added, giving a total premium of £13.72.

It is clear from the different values that the premium of £6.10 that Mr C paid for £6,000 of cover cannot have been for a with profits policy. That cover would have cost more than twice what Mr C paid for his policy. Therefore, I disagree that Mr C ought to have received seven years' worth of profit share from 1974 to 1981, as I do not believe his policy was instituted on a with profits basis, such that it would have entitled him to receive reversionary additions to

the sum assured based on any annual profit share.

Furthermore, if Mr C's policy had been set up on a profit share basis, the sum assured would not have been recorded by Aviva as £6,000 on receipt of the transferred policy from Winterthur, as it would have increased in the intervening years – but it did not do so. Similarly, no statements have ever been issued by Provident Life, Winterthur or Aviva for the policy – which would be the case if it was operated on a with profits basis.

Once Mr C ceased paying policy premiums, the policy became paid up. This was provided for within the policy terms and conditions which set out that:

> "***Surrender and Paid-up Values.***
> *If premiums are payable for a term of 35 years or less, the basic policy may be surrendered for a cash surrender value or converted to a fully paid up assurance for a reduced amount after two years premiums have been duly paid.*
> *If premiums are payable for more than 35 years the policy would acquire surrender and fully paid up values after the payment of three years premiums.*"

Mr C's policy had a premium payable term of over 35 years, so it could be made paid up with a reduced sum assured (in this case now worth £1,300) after the first three years of premiums were paid. When a policy is made paid up, no further premiums can be paid.

Mr C takes the view that the value of the premiums he paid in ought to have been invested in the intervening years, given it is over 40 years since the policy was made paid up. But Aviva (and Provident Life and Winterthur Life before it) was under no obligation to do that. It was not an investment policy; nor has Mr C been deprived of his funds since that time such that interest ought to apply on the sum.

The purpose of the policy was to pay an agreed sum assured of £6,000 in the event Mr C passed away. The sum assured is less than what was agreed from the outset because Mr C did not pay premiums for the agreed term to age 65; however, the sum assured does broadly equate to the percentage of premiums paid in for the equivalent proportion of years from the agreed term.

I appreciate Mr C holds a vastly different view on this matter, and my decision will not be what he has hoped for. However, I will only uphold complaints in circumstances where I find a business to have acted unfairly or unreasonably in some way. I haven't seen any clear suggestion that Aviva has issued an incorrect valuation of this policy, that the information it does hold is false or that it has administered it contrary to the likely basis upon which it was taken out with Provident Life in 1974. I can't therefore make any direction or award to Mr C.

My final decision

I do not uphold this complaint for the reasons given above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 February 2024.

Jo Storey
Ombudsman