DRN-4192979

The complaint

Mr and Mrs P are unhappy, in summary, as they don't think Aviva Life & Pensions UK Limited ('Aviva') has correctly administered the reviewable whole of life policy that they hold with it.

What happened

I've outlined what I think are the key events involved in Mr and Mrs P's complaint below.

It isn't in dispute that Mr and Mrs P took out a reviewable Whole of Life policy in 1996 for a monthly premium of £17.18 with a sum assured of £35,000 and waiver of premium benefit. This was on a maximum cover basis, where the sum assured was guaranteed for ten years until the first review and after which it would be reviewed every five years.

In May 2006, Aviva sent Mr and Mrs P what I will call 'the 2006 review letter'. This said that at each review Aviva would work out now much their plan might be worth at the next review date. That it had only reviewed the plan up to the same time in 2011 and that if the value of their investment changes as predicted, they'd have enough money in the plan to keep the sum assured at £35,000.

At the end of March 2011, Aviva sent Mr and Mrs P the '2011 review letter'. This said that it reviews their policy at regular intervals to check the premium still supports the chosen level of benefits. And, in bold writing, it said that Aviva considered there to now be a high risk that Mr and Mrs P's policy might not sustain the benefits, that they needed to take action to maintain these and it set out their options. Option 1 was to maintain the sum assured of £35,000 but for a premium of £23.85 until the next review. Option 2 was to maintain the current £17.18 premium but for a reduced sum assured of £28,876. Option 3 was to take no action and leave the policy unchanged, which it said might mean that the policy wouldn't support the benefits for the whole term. And Aviva said that if it didn't hear back from Mr and Mrs M by 2 May 2011 then Option 2 would apply, which I understand is what happened.

On 8 December 2015, Aviva wrote to Mr and Mrs P and said, in summary, that the reduced sum assured figure of £28,876 that it had previously given them was incorrect, as at some reviews it had used incorrect figures and assumptions. Aviva recognised this shouldn't have happened and apologised for its mistake. And it said that to put this right, if it didn't hear back from Mr and Mrs P to say otherwise by 15 January 2016, it would change their sum assured to the level it would now be – just over £29,200 – if it had done what it should have. And in that case the premium would stay at £17.18 and the fund value would remain at its current level of £112.17. Aviva also said it would need to deduct more units for their fund value each month in future to meet the cost of providing the higher sum assured.

And, towards the end of 2016, Aviva wrote to Mr and Mrs P and confirmed that as it hadn't heard from them – seemingly in response to its 8 December 2015 letter – it had updated their policy and put it back in the position it would have been in had it reviewed this correctly and with a sum assured of just over £29,200.

At the end of November 2016, Aviva sent Mr and Mrs P its '2016 review letter'. This said in bold writing at the top, in a box, that the outcome of the review was that it could no longer guarantee their current benefit amount until their next review date. And some of the key information provided was that:

- Because the cost of providing their benefit has been higher than their premium the difference in cost has been met from their fund value, which has now been used up to pay for their benefit. So their policy does not currently have a cash-in value. Although they should not rely on their policy producing a cash-in value, as it isn't designed to be used as an investment.

- Option 1 - increase the premium to £41.48 per month to maintain the current sum assured of just over £29,200 until 2021.

- Option 2 (the default option if it didn't hear from them by mid-January 2017) – their £17.18 premium would stay the same and the sum assured of just over £29,200 would reduce to £8,732.68 until the next review in 2021.

- Mr and Mrs P's cover wouldn't reduce below a minimum guaranteed benefit that was currently £6,765 if they continued to pay the premiums.

On 14 January 2017, Aviva wrote to Mr and Mrs P and confirmed that option two would be applied with effect from 13 January 2017.

In January 2017, a call note from the time reflects that Mr and Mrs P told Aviva that they were concerned it had asked for an amount three times higher than their current premium and that they wanted to know how it had reached those.

In February 2017, Aviva replied in writing and said, amongst other things, that the cost of life cover is calculated based on probability of a claim being made, so it increases with age. At each review it checks to see if the premium is on target to support the benefit level. Cover and administration costs are met by cancelling out units purchased with the monthly premium. And during the earlier policy years, total charges and costs were lower than the premium paid, so the units accumulated to build the fund value. It said that its calculations are commercially sensitive, but that in January 2017 the cost of cover and admin fees totalled over £30.

On 6 April 2018, Aviva wrote to Mr and Mrs P and said, in summary, that as it had taken longer than expected for it to complete their 2016 review this meant the figures it had provided were incorrect and that it had reduced their sum assured by more than it had needed to. So, with effect from 9 June 2018, Mr and Mrs P's sum assured would increase from just over £8,700 to just over £11,200 and the policy would be put in the position it would be if it had reviewed this correctly.

On 3 September 2018, Aviva confirmed to Mr and Mrs P in writing that their policy had been updated as per its April 2018 letter and it had calculated how many extra units they'd now have if it had administered the policy as it should have.

In April 2021, Aviva sent Mr and Mrs P its '2021 review letter'. This said in bold writing at the top, in a box, that the outcome of the review was that it could no longer guarantee their current benefit amount until their next review date and it set out their options. Option 1 was to increase the premium to £21.51 per month to maintain the current sum assured of just over £11,200 until 2026. And Option 2 (the default option if it didn't hear from them by the

end of May 2021) was to maintain their current premium of £17.18 but the sum assured would reduce to £8,463, until the next review in 2026.

In April 2021, Mr and Mrs P complained to Aviva. They said, in summary, that they were unhappy that the recent 2021 review had shown a disappointing benefit amount – they said the very large reduction from the initial sum assured of £35,000 to now just under £8,500 is unfair.

In September 2021, Aviva sent Mr and Mrs P its final response letter not upholding their complaint. The following month, Mr and Mrs P contacted Aviva again in response and said they had no faith that its 2021 review was correct given the errors with previous reviews. And Aviva said that there was no reason to think this was incorrect, and if it was then it would put this right again with no financial impact to Mr and Mrs P in the way it had previously.

In November 2021, unhappy with this, Mr and Mrs P referred their complaint to our Service. They clarified that they're unhappy there has been such a large reduction in the sum assured from the 2016 review onwards. They said they expected reductions as they aged, but the amount is unfair and disproportionate. They recognised Aviva has made the necessary changes to the plan to put it back in the position it would have been in had there been no errors with the reviews. But they said that the previous errors don't give them much faith that the latest review was accurate. And they'd like Aviva to offer them a fair sum of financial support at what would be a very difficult time if one of them passed away.

Aviva initially objected to our Service considering Mr and Mrs P's complaint – it said this had been made too late for us to do so. But, after our Investigator said that the call note Aviva made when Mr and Mrs P called it in 2017 shows they were concerned about the 2016 review, Aviva agreed to us considering the merits of Mr and Mrs P's complaint – as this is no longer in dispute I haven't commented on or considered this any further.

One of our Investigators reviewed Mr and Mrs P' complaint and said they weren't asking Aviva to do anything. In summary, they said that Aviva ought reasonably to have known since around the time of the 2006 review that significant changes would likely need to be made to Mr and Mrs P's premiums or level of cover as they got older. And that Aviva's correspondence didn't meet regulatory obligations and standards of good practice. But they said that even if Aviva had provided Mr and Mrs P with the information it should have, on balance they weren't persuaded they would have done anything differently.

Mr and Mrs P didn't agree and asked for an Ombudsman to consider their complaint. They added that they were satisfied with sum assured of just over £29,200 given to them after Aviva informed them of its first error. But it's the significant drop in the sum assured less than a year later in 2016 which is difficult to accept, and they feel that the two errors Aviva made have somehow contributed to the drastic benefit reduction.

Because no agreement could be reached the case has been passed to me for a decision.

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.

Having done so, I'm not asking Aviva to do anything for the following reasons, which are largely the same as those given by our Investigator.

In deciding this complaint I've taken into account the law, any relevant regulatory rules including the principles and good industry practice at the time.

While I've carefully considered the entirety of the submissions the parties have provided, my decision focuses on what I consider to be the central issues. The purpose of my decision isn't to comment on every point or question made, rather it's to set out my decision and reasons for reaching it.

Relevant considerations

In reaching my conclusions, I've considered, amongst other things:

- The FCA's Principles for Businesses, in particular Principle 6 and Principle 7 (PRIN).
- The FCA's Conduct of Business Sourcebook (COBS), in particular COBS 2.1.1R(1) and COBS 4.2.1R(1).
- The FCA's Final guidance on the "*Fair treatment of long-standing customers in the life insurance sector"* (FG16/8).

What is the fair and reasonable outcome in the circumstances of this complaint

The key feature of Mr and Mrs P's policy is that part of the premiums they were paying throughout the years were to be invested to pay for the increasing costs of life cover later in life. This is because for these types of policies, there's an increased likelihood of increasing life cover costs as the policyholder gets older. While Mr and Mrs P are unhappy with the effect of these increasing costs on the value of the policy and they've said they raised that dissatisfaction at other times in the past, these are simply an inevitable consequence of the policy becoming more expensive as the policyholder gets older. This is very typical for these types of policies. It is also what allows these policies to be more affordable at the outset.

In the early years, when life cover costs are low, part of the premiums are invested to build up a fund that can be used to help pay for the increasing life cover costs in later years. At this stage, the premiums can meet the costs of the cover on their own. However, if the premiums remain at the same level, there inevitably comes a point where the life cover costs will exceed the monthly premium and units in the investment fund need to be sold to meet the shortfall, reducing the investment fund value over time – unless the fund's growth outpaces the rise in cover costs.

Eventually, regular increases in the cost of life cover will outpace the growth in the fund, so that as units in the fund continue to be sold, it will reach a point when the firm concludes that the premiums being paid and the fund value are no longer enough to pay for the costs of cover. To maintain the policy with its existing life cover, the premiums (if they are still at the level they were when the policy began) will need to increase suddenly and substantially and will continue to increase each year as the consumers get older and the life cover costs increase accordingly, unless the sum assured has been substantially reduced. This is what has happened to Mr and Mrs P's policy.

At this point, there can be several poor outcomes for the consumer. It's possible that the investment fund will be almost completely depleted, leaving little surrender value. Any increase in premiums is likely to be very expensive and potentially unaffordable at a time when the consumer may be retired or close to retirement and have limited means to meet significant increases in costs. Alternatively, if the level of life cover has reduced substantially, the policy may no longer meet the consumer's objectives or ceases to be a cost-effective proposition.

The impact of the sudden and significant changes to the premium or level of life cover that occur at the point the policy fails a review, can be mitigated by adjusting the terms of the cover earlier in the life of the policy. If, for instance, a consumer elects to increase premiums some years *before* the policy is likely to fail a review, this will have a smoothing effect over time, so that the policy is less likely to fail a review and the sudden and dramatic premium increases down the track can be avoided.

This gives the consumer the chance to set premiums at a more affordable and sustainable level for a longer period – even for the rest of their lifetime. The new premiums will be higher than they were at the outset, but not as high as they would otherwise need to become at the point the policy fails its review.

Alternatively, at that earlier point, a consumer who is faced with significant increases in premiums or decreases in the level of life cover down the track might decide the policy itself is no longer cost effective, or that it is failing to meet its objectives, and elect to surrender the policy. In other cases, a consumer might decide that it is worth maintaining the policy on its existing terms right up to the point that the policy fails a review.

The opportunity for a consumer to make these decisions is a key event in the life of the policy. Given the impact of increasing life cover costs on the investment fund, and in time on the premiums (or sum assured), consumers have important decisions to make about whether to retain the policy, increase the premiums and / or decrease the sum assured during the life of the policy. Those decisions become more difficult the longer the consumer pays into the policy and the options available for mitigating poor outcomes start to diminish. So it is in a consumer's interest to make key decisions at an early stage in the policy's life cycle, and to do so in an informed way, firms need to provide consumers with clear, fair and not misleading information.

Increasing life cover charges and the reviews of Mr and Mrs P's policy

Looking at the available evidence, I can see that from May 2006 the monthly cost of cover, including admin charges, had become higher than Mr and Mrs P's £17.18 monthly premium. While it seems these costs then fell below or became higher than Mr and Mrs P's premium at times, in the run up to the 2011 review the cost of cover, including admin charges, was then at around £20 per month.

Following the 2011 review, after the sum assured decreased in or around May 2011, the cost of cover, including admin charges, did decrease slightly. But at around £19 this remained higher than Mr and Mrs P's premium. And after that the cost of cover, including admin charges, consistently continued to rise to around £34 in January 2017.

Following the 2016 review, when the sum assured decreased after mid-January 2017, the cost of cover, including admin charges, decreased against the premium until mid-2018. But after that the costs again overtook the monthly premium for much of the time until around the 2021 review, after which these reduced to £14.25 seemingly in light of the decrease in sum assured. And, in addition, the 2021 annual statement reflects *total* costs and charges (excluding waiver of premium benefit cost) as just under £240 against total premiums paid that year of just over £212.

So, based on the available evidence, overall the policy has been costing more than the premiums paid since mid-2006.

What should Aviva have told Mr and Mrs P?

Taking into account the regulatory obligations I have set out above (PRIN) and what I consider to be standards of good industry practice at the time (including the regulator's views as expressed in FG16/8), and in any event what I consider to have been fair and reasonable in the circumstances, I'm satisfied that Aviva should have taken steps to ensure it communicated information to enable Mr and Mrs P to evaluate the impact of the increasing life cover costs on their policy and the options available to them in a clear, fair and not misleading way. This needed to include the risks, costs and benefits associated with those options, as well as giving them clear timelines for the making of decisions where applicable.

In my view, this is something that Aviva needed to do within 12 months of the tipping point being reached – and as I've said, I think it's likely this point occurred in mid-2006. By giving Mr and Mrs P clear information about how much the policy was costing and allowing them to compare those costs with the premiums they were paying, Aviva would've been acting consistently with the guidance at FG 16/8 that firms provide *"regular communications"* with customers – and to ensure that, in their communications, that *"firms [include] sufficient and clearly explained details regarding the performance of the product, its value and the impact of fees and charges"*. Such communications also needed to specifically set out the *"value of any premiums paid in over that period", and "charges incurred over the period in monetary figures",* including *"major components and the charge to the customer for benefits such as life cover and guarantees".*

What information did Aviva give Mr and Mrs P?

I think this is the key aspect of the complaint. Although I don't have evidence of what Mr and Mrs P were told in the years leading up to the 2006 review, my experience of these types of complaints suggests that it is likely Mr and Mrs P weren't told what the costs were or how much these amounted to. I think it's likely they were given some general information about their policy, but likely not enough to fully appreciate how much this was costing and that the gap between their premium and the charges was closing year on year.

In the 2006 review letter, Mr and Mrs P were told that if the value of their investment changes as predicted, they'd have enough money in the plan to keep the sum assured at £35,000 until their next review in 2011. And this was seemingly on the basis that Aviva considered there would be enough investment growth in their fund value to meet any shortfall in the cost of the policy against premiums paid. But I don't think they were given enough information to appreciate how much their policy was costing and that the gap between their premium and the charges had closed and was likely to continue to do so in the way I've set out above.

In 2011 the situation changed as the policy first failed a review. As set out above, this 2011 review letter said, in summary that Aviva considered there to now be a high risk that Mr and Mrs P's policy might not sustain the benefits and that they needed to take action to maintain these. And it set out basic information about their options, as set out above. But I've seen nothing to show that Aviva gave Mr and Mrs P an indication of the actual costs and how these might rise and impact their policy.

The 2016 and 2021 review letters were similar in content and did provide a bit more information. Although Mr and Mrs P weren't told the specific level of charges or the premiums required to make the policy sustainable for life, I recognise they were told, for example, in bold type at the top that the outcome of the review was that it could no longer guarantee their current benefit amount until their next review date. And the 2016 review letter also said, for example, that as the cost of providing their benefit has been higher than their premium it meant the difference in cost had been met from their fund value, which has now been used up to pay for their benefit. So I think it was clear that they needed to act if

they wanted to maintain the current sum assured and they were given some information as to why.

And, in the meantime, in February 2017, Aviva also gave Mr and Mrs P more information about how the policy worked in response to their enquiries about the 2016 review letter. I think they were given some information about the level of charges and how this was impacting the policy when Aviva told them, amongst other things, that during the earlier policy years, total charges and costs were lower than the premium paid, so the units accumulated to build the fund value. But that, in January 2017, the cost of cover and admin fees totalled over £30 – which I think Mr and Mrs P should reasonably have known was less than their £17.28 premium. And that cover and administration costs are met by cancelling out units purchased with the monthly premium. Although Mr and Mrs P again weren't told the premiums required to make the policy sustainable for life.

Looking at the available annual statements sent to Mr and Mrs P dating back to 2009, until 2019 these largely only contained details of what their fund was invested in. From 2012 these also included the policy surrender value, which overall and with a few small exceptions was largely decreasing over time. For example, the May 2011 statement said the fund value was just over £436, while the May 2019 statement shows the surrender value was £98.42 and that Mr and Mrs P's total premiums that year were £206.16. Mr and Mrs P's May 2021 annual statement, for example, also gave them a bit more information when it said, amongst other things, that the policy surrender value was just over £21 compared to just over £45 the previous year and, as set out above, that the *total* costs and charges (excluding waiver of premium cost) was just under £240 against total premiums paid that year of just over £212.

But there was no information about the future impact of ever-increasing charges on the policy – for example a projection over the policy life to show what these might mean for the value of the underlying fund if their premiums remained the same. There was also no other commentary in the statements about the policy itself – for example how long it might be sustainable for.

So, having taken everything into account, I don't think Mr and Mrs P were provided with enough information about the policy relating to the cost of providing cover. Therefore, I think there was an imbalance of knowledge between them and Aviva, which meant they couldn't make a fully informed decision about what steps they wanted or needed to take following the tipping point being reached.

What, if anything, would Mr and Mrs P have done differently?

On balance and for the reasons set out below, having considered what, if anything, I think Mr and Mrs P would likely have done if Aviva had provided all the information it should have, I don't think they are likely to have done anything differently in the circumstances.

I think it's clear that Mr and Mrs P have still wanted the cover but they didn't want to pay any more for it than they have been, considering they've kept the policy in place but with the same premium throughout. And that's despite knowing since 2011, 2016 and 2021 that the sum assured would therefore reduce. And despite also knowing since 2017 that the cost of cover and admin fees totalled more than their monthly premium and that cover and administration costs were likely being met by cancelling out units purchased with the monthly premium. So I don't think Mr and Mrs P are likely to have taken a different course of action if they'd been given more information and sooner about, for example, how to make the policy sustainable for life. I think they'd likely have maintained the premium and that the sum assured would have reduced in the way it has.

When reaching this decision, I've taken into account that Mr and Mrs P have said that Aviva's previous two review errors don't give them much faith that the latest 2021 review was accurate. And that they feel that Aviva's errors have somehow contributed to the drastic benefit reduction by around £20,000 since 2016.

I've seen nothing to suggest this is the case though. While I appreciate these errors might have caused Mr and Mrs P to lose some confidence in the ongoing reviews, from the information I've seen it seems Aviva proactively recognised its own errors, apologised and put this right. Aviva has also since reassured Mr and Mrs P that it has was no reason to think the 2021 review was incorrect and it has said, in the way I'd expect it to, that if it was then it would put this right again with no financial impact to Mr and Mrs P in the way it did previously.

And, as I've said above, with this type of policy regular increases in the cost of life cover will outpace the growth in the fund, so that as units in the fund continue to be sold, it will reach a point when the firm concludes that the premiums being paid and the fund value are no longer enough to pay for the costs of cover. To maintain the policy with its existing life cover, the premiums (if they are still at the level they were when the policy began) will need to increase suddenly and substantially and will continue to increase each year as the consumers get older and the life cover costs increase accordingly, unless the sum assured has been substantially reduced. This is what has happened to Mr and Mrs P's policy.

So, in summary, I'm not persuaded that even if Aviva had provided Mr and Mrs P with more information, that they would have taken a different course of action. And, while I understand Mr and Mrs P will be disappointed, I'm not asking Aviva to do anything in the circumstances.

My final decision

For the reasons given, I'm not asking Aviva Life & Pensions UK Limited to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 5 September 2025.

Holly Jackson
Ombudsman