

## **The complaint**

Mr J, Mrs J, Mr P and Mrs P (the trustees) complain about the loss of qualifying tax status for a life policy resulting from an administrative error on the part of Aviva Life & Pensions UK Limited.

## **What happened**

In March 1994 Mrs P took out a life policy with Norwich Union – now Aviva - which was put in trust. The policy was at that time a qualifying policy for tax purposes. In simple terms this means it met certain criteria which meant that at the point the policy matured or was surrendered there would be no tax to pay.

In June 2022 Aviva wrote to Mrs P informing her that due to an administrative error on its part the policy was no longer qualifying. It said that it would refund any tax payable when the policy paid out.

Mrs P complained to Aviva on 28 June 2022 referring to the notification she had received of the loss of qualifying status of the policy setting out why she wasn't happy with the offer to repay any tax payable and insisting that the policy remain as qualifying.

Aviva has no record of receiving the letter, or the follow up letter she sent. Mrs P then telephoned Aviva about her complaint and it subsequently issued a final response to the complaint in October 2022.

It explained that it couldn't change the status of the policy so that it became qualifying again, as HMRC wouldn't allow it to do so. It said that it would reimburse any tax payable on the policy maturing or being surrendered and offered to pay £250 for the inconvenience caused.

Mrs P then referred the complaint to our service and it was considered by one of our investigators. In short he was satisfied that Aviva offering to repay any tax that became payable and £250 for the distress and inconvenience caused was fair and reasonable.

Mrs P didn't agree with the investigator. She said that Aviva had made an irreversible change to the policy she had taken out which has had a detrimental impact on her and the beneficiaries and there has been no explanation as to how or why this error occurred. She said the apology from Aviva was perfunctory and she would have expected a more critical commentary by the investigator on its performance.

Mrs P also said that the investigator hadn't taken account of the full contractual, financial, and emotional implications of the error by Aviva resulting from the loss of qualifying status of the policy or commented on its failure to contact HMRC to seek a return of the policy to qualifying status.

## **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.

My role is to determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case based on the information provided by the parties and taking into account relevant: law and regulations; regulator's rules, guidance and standards; codes of practice; good industry practice at the time - where I consider it appropriate to do so. My findings of fact are made on a balance of probabilities – what is more likely than not – and it is for me to decide how much weight to give to evidence provided by the parties.

There is no issue that the life policy lost its qualifying tax status due to an administrative error on the part of Aviva. It wrote to Mrs P to inform her of this in June 2022 and acknowledged the error in its final response to the complaint in October 2022.

Mrs P said in response to the investigator's opinion that there had been no explanation as to how or why the error occurred. I don't think it is necessary for me to address this in detail but I note that the Q & A document that Aviva says was enclosed with its letter of June 2022 informed Mrs P of the loss of qualifying status and explained how this came about.

It explains that due to changes in legislation in 2013 a declaration needed to be made by Mrs P as to not exceeding the annual premium limit for qualifying policies whenever there was a premium increase or other changes to the policy. Aviva didn't inform Mrs P of this or provide her with the declaration to complete and because no declaration was provided when it should have been the policy lost its qualifying tax status automatically.

I note Mrs P said she expected a more critical commentary by the investigator as to what Aviva did wrong. However, our role is to decide if the firm the subject of a complaint has got things wrong and if we find that it has, determine what it should do to put things right. Aviva accepted at the outset, quite rightly in the circumstances, that it hadn't done what it should have done and that this resulted in the loss of qualifying tax status for the policy. There is therefore no need for me to go into detail about this, as the issue I need to address is what it should do to put things right.

Mrs P has suggested that there has been a failure on the part of Aviva to contact HMRC to seek a return of the policy to its qualifying tax status. However, I am not satisfied that Aviva has any basis for making such a request and am not persuaded that it has done anything wrong in not doing so. I will briefly explain why I have come to that conclusion.

The information on the HMRC website shows that it is the insurer that decides whether a policy is qualifying or not, based on the rules set by HMRC in relation to this. In accordance with those rules, the policy automatically became non-qualifying when the necessary declaration wasn't made by Mrs P within the specified time limit – within three months of premium increase or other event requiring a declaration.

In the circumstances it appears the only way for the policy to be made qualifying again would be for Mrs P to contact HMRC and see whether it would agree to an extension of time for her providing the declaration/s to Aviva that should have been provided previously - which I think is probably unlikely in the circumstances, given we are going back to 2013.

Aviva has agreed that it will repay any tax that is paid when the policy pays out and I don't think that is unreasonable. I note Mrs P's concern that she raised with it that it might not pay the beneficiaries in good time or might not pay the full amount. However, it is a regulated business and there is no good reason to think it wouldn't repay any tax paid as per its agreement to do so.

I also acknowledge the point Mrs P made to it about it being taken over by another business and the possibility the new business wouldn't keep to the agreement Aviva has made to

repay tax. I accept that is a possibility but I am not persuaded this means that what Aviva has proposed is unreasonable.

### **Putting things right**

Mrs P has argued that account hasn't been taken of the full contractual, financial, and emotional implications resulting from Aviva's failings. I don't think the contract has been affected by the loss of qualifying tax status - in that the rights and obligations under the policy remain the same and the amounts specified in the policy are still payable. In terms of the financial implications, these aren't known at this point in time as it isn't possible to know what, if any, tax may become payable. In any event Aviva's promise to pay tax that may become payable addresses this.

In terms of the emotional impact, being informed that the policy was no longer qualifying will no doubt have been distressing. However, I am satisfied in the circumstances that the offer of £250 made by Aviva is a reasonable amount for the distress and inconvenience caused by its failings in this case.

### **My final decision**

I uphold this complaint for the reasons I have set out above. Aviva should pay the trustees £250 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J, Mrs J, Mr P and Mrs P as trustees of the P Trust to accept or reject my decision before 4 December 2023.

Philip Gibbons  
**Ombudsman**