

The complaint

The trustees of Mr and Mrs B's (Mr and Mrs B and Mr B) trust ('the Trust') 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's held with it.

Although as Mr and Mrs B have corresponded with us throughout, I've referred to them in place of the Trust where I think appropriate.

What happened

I've outlined what I think are the key events involved in the complaint below.

Mr and Mrs B took out a Reviewable Whole of Life policy in 1997 with The Norwich Union Life Insurance Society (Aviva is now responsible for this complaint though, so I will refer to it throughout) for a monthly premium of £20 with a sum assured of just under £60,000, with waiver of premium benefit and an inflationary increase option. This was on a maximum cover basis and it was subject to a review at the 10-year anniversary and then regular reviews every five years thereafter.

I understand that by 2005 the sum assured and premium increased with inflation. And the 2007 review 'passed' so no changes were required. At the same time though, an option was given to increase the benefits in line with inflation to a sum assured of just under £76,100 for a premium to just over £30, which was accepted.

It's unclear to me what happened at the 2012 review. Although I understand that at some point between 2007 and 2017, the policy sum assured and premium increased – likely in line with inflation – to just under £107,600 and just over £42 respectively.

The 2017 review 'passed', as no changes were required. In the letter, Aviva said it reviews the policy at regular intervals to check the premium still supports the current benefit level. In bold writing and a box at the top, Aviva said it could guarantee the current benefit amount until 2022. It enclosed a projection to indicate how many years their current premium of just over £42 might support the sum assured of just under £107,600 before the fund value runs out using growth rate assumptions, which showed that it might do so for a maximum of around seven years. And Aviva said that at the review immediately before that happens it would likely reduce the sum assured, after giving the option to increase the premium instead. It said that, if the priority was to maintain the current benefit level for life and the projection showed this was unlikely, then action should be taken. And that Aviva can provide quotations to show what was needed to maintain the policy for life.

It seems Aviva sent an inflation option letter in 2021, although I don't seem to have been provided with a copy. In response, Mr and Mrs B wrote to Aviva in April 2021 and said that they didn't want to take up the option that year. And they said that Aviva's position that there would be no more inflationary increases beyond 2022 means the policy will effectively decrease in value over the years.

In response, Aviva said it had stopped the increase, so the premium would remain at just over £49 (so it had seemingly increased a little with inflation since 2017) and for a sum assured of £124,546. It confirmed the inflation option is only available to the age of 60, which Mr B would turn in 2022. However, the policy is still subject to reviews. Aviva explained, amongst other things, that at each review it looks at the current policy position and projects this forward to the next review using assumptions about expected investment returns and the cost of life cover over that time. And it assesses whether the fund value is likely to run out before the next review. If so, the sum assured will need to be reduced to a sustainable level without the fund running out, or the premium will need to be increased instead. And that at each review the changes made are that required to ensure the policy costs can be met until the next review date.

The 2022 review 'failed'. The letter said in bold writing at the top, in a box, that Aviva could no longer guarantee the current benefit until the next review date. And some of the key information provided was that:

- Any change made because of this review would only be guaranteed until 2027, at which point a further change would almost certainly be needed and that further action was likely to be needed at every future review.
- Option 1 - increase the current premium from just under £53 to £69.48 to maintain the sum assured of just over £134,300 until 2027.
- Option 2 (the default option – which I understand has since been applied) – the premium would stay the same and the sum assured would reduce to £114,346 until the next review in 2027.
- The cover wouldn't reduce below a minimum guaranteed benefit that was currently £13,194 if they continued to pay the premiums.
- The enclosed projections set out that as things currently stood with no changes made and based on growth rate projections, the policy might support the benefits for a maximum of around four years. But if they instead chose option 1 or 2 then it could support this for just over five years.

In April 2022, a complaint was made to Aviva. This said, in summary, that the increases are unfair. It had effectively cost £20,000 to continue to have life cover for the next five years and it was concerned by how much the sum assured could drop by again in future. Mr and Mrs B took out the policy for family protection. But they weren't told about the large drops in sum assured or premium increases and if they had been it would have impacted their decision to do so.

In May 2022, Aviva sent its final response letter not upholding the complaint. And the same month, unhappy with this, the complaint was referred to our Service. It was clarified that the complaint concerns the 2022 review and that it wasn't made clear to Mr and Mrs B when they took the policy out that there would be such a significant change to the premium or benefit amount as they got older. They feel they were mis-led and said that if they'd known otherwise, they'd have potentially looked at other products. In resolution of the complaint, they'd like Aviva to return the sum assured to just over £134,000. For clarity, this decision only addresses the review element of the complaint, I've addressed the sale complaint in a separate decision.

One of our Investigators reviewed the complaint and, after initially upholding it, they said they weren't asking Aviva to do anything. In respect of the policy reviews, the Investigator

said that Aviva ought reasonably to have known since around the time of the 2017 review that significant changes would likely be needed to the premiums or level of cover as Mr and Mrs B got older, as the cost of cover had started to outweigh the premiums paid. And that Aviva's correspondence didn't meet regulatory obligations and standards of good practice. But the Investigator said that, even if Aviva had provided the information it should have, on balance they weren't persuaded the Trust would have done anything differently.

Amongst other things, Aviva added that:

- It consents to our Service considering all aspects of the complaint, even if made late.
- The policy was taken out on a maximum cover basis, meaning a high amount of cover for a low premium. For policies taken out on such a basis there is never any prospect that the chosen amount of cover could be indefinitely maintained without increases becoming necessary at reviews.
- The reviews checked whether the premium and the fund value, not just the premium, was sufficient to meet policy charges until the next review date. And, in 2017, these were sufficient when taken together.
- Its reviews were clear that action taken would only guarantee the policy until the next review date, it gave projections on how long the policy would support the benefits for and it highlighted their options without being prescriptive.

No agreement could be reached and Mr and Mrs B added, in summary, that:

- At the time of sale they had decreasing term assurance to cover their mortgage, which expired when they paid this off. The Aviva policy was taken out to provide family protection while their children were dependent and then to provide comfort to the surviving spouse and even to pass on some to their children as part of their inheritance in the long term.
- If they'd known the sum assured would start to significantly reduce when they got older it isn't unreasonable to think they'd have looked for a more competitive policy sooner – Aviva should have made this clearer to them sooner.
- They don't know what kind of cover would have been available in 2017 if they'd surrendered the policy. While they might not have been able to find one for the same premium and sum assured, that doesn't mean they wouldn't have considered one with a reduced sum assured.
- They haven't since cancelled the policy while the complaint is ongoing in case it goes in their favour. And affordability has no bearing on the reason for their ongoing dispute with Aviva.

Our Investigator asked for further information and evidence as to what Mr and Mrs B feel the Trust would have done in 2017 and in respect of whether it would still have increased the sum assured in line with indexation. And, in response, they said it's difficult to know so they therefore feel there's little point in speculating. They said they would probably have complained to Aviva. But there's little doubt they required some life cover when the policy was taken out due to their circumstances. However, it seems this type of policy was always going to result in a big rise in premium or reduction in sum assured. And it isn't unreasonable to think that if this was made clear at the time the policy was taken out that they may have considered a different one at the time.

Our Investigator's view remained the same. And, 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, while I understand the Trust will be disappointed, 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 this policy is that part of the premiums Mr and Mrs B 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 the Trust is unhappy with the effect of these increasing costs on the value of the policy, 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 will need to increase 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 here.

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 the policy

Looking at the available evidence, I can see that by mid-2016 the cost of cover in this case, including admin charges, was just over £41 and therefore close to the monthly premium amount of just over £42. And I can see that, from May 2017, these costs became higher than the monthly premium.

I understand that at some point between 2017 and 2021 the policy premium rose to around £49 per month and that this later rose again to around £53 which it has since remained at. But since May 2018 the monthly cost of cover has been higher than these increased premium amounts.

So, based on the available evidence, overall the policy has been costing more than the premiums paid since mid-2017.

What should Aviva have told the Trust?

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 the Trust 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-2017. By giving the Trust clear information about how much the policy was costing and allowing it to compare those costs with the premiums being paid, 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 the Trust?

As the policy was reviewed in April 2017, which was around the time the tipping point had been reached, then either within the review letter itself or within a reasonable timescale afterwards, Aviva had an opportunity to provide the Trust with clear information to enable it to consider its options and make a timely decision. Particularly given that, while the 2017 review didn't 'fail', with each year that passed, life cover costs would likely continue to increase, and in turn the level of premium needed to put the policy on a more sustainable track was also increasing, making any potential mitigating steps more costly than these otherwise would be over time.

Looking at the 2017 review letter, while this review 'passed', it's clear that some key information was conveyed to the Trust. Aviva, for example, said that the current policy premium might support the benefits for a maximum of around seven years before the fund value runs out. So I think it was indicated to the Trust how long the policy might currently be sustainable for based on the premium, that this wouldn't maintain the policy for life and it was given a timeframe for when changes might start to need to be made to the policy. The Trust was also told that at the review immediately before that happens action would need to be taken, such as reducing the sum assured or increasing their premium. And Aviva said that it could provide quotations to show the premium it estimated as needed to maintain the policy throughout life.

The 2022 letter, which detailed the first failed review, said, in summary that it could no longer guarantee the current benefit amount until the next review date and that in future at the 2027 review further change would almost certainly also be needed. And it again enclosed a projection which showed that the policy might support the current benefits for a maximum of around four years, or five if one of the options set out was taken. So it again indicated that the premium wouldn't maintain the current benefit level for life and this time it set out that the Trust needed to act and it provided some options. And the enclosed projection also showed the impact on the fund value if no changes were made versus if changes were made.

But Aviva should have also given the Trust sufficient and clearly explained details at the reviews for it to appreciate how much the policy was actually costing – there was no information about the cost of cover in the letters – and that the gap between the premium

and the charges had closed, or was closing, for it to make an informed decision. We haven't been provided with copies of annual statements for me to see what, if any, information the Trust was given about how much the policy was actually costing against the premium, for example. And the letters didn't detail the premiums required to make the policy sustainable for life, for example.

In my view, communications once the tipping point had been reached should not reasonably provide information in a passive way that required the consumer to draw important inferences for themselves as it did here. Aviva should've provided the information in a stark, clear form, including meaningful information about the options available to the Trust at this point, together with the costs and benefits as well as time frames for reply. And if, for instance, precise numerical information about the costs of those options could not be given, then at the very least I would expect to see reasonable approximations or illustrative examples so that the consumer could reasonably appreciate the importance of considering options at that point.

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

What, if anything, would the Trust have done differently?

Had the Trust been given clear, fair and not misleading information, the options open to it at that point would have been to surrender the policy for the cash in value, increase the premiums to maintain the sum assured, reduce the sum assured or take no action.

On balance and for the reasons set out below, having considered all the submissions and information to decide what, if anything, I think would have likely happened if Aviva had provided all the information it should have, I don't think it's likely that anything would have been done differently in the circumstances.

To recap, when we've asked about Mr and Mrs B what, if anything, the Trust is likely to have been done differently had Aviva done what it should have they said, in summary, that other policies might have been considered, possibly with a lower sum assured if a similar one couldn't be found – although they said they don't know what kind. But that it is difficult to know what would have been done differently, so they feel there is little point in speculating.

So, I don't think Mr and Mrs B have a clear idea of what, if anything at all, would likely – not just might – have been done differently and I'm not persuaded by their comments about what they might have done.

Having considered this matter, I'm satisfied the Trust has continued to want and need the policy. I think this is supported by Mr and Mrs B having said that in resolution of the complaint they want the sum assured of just over £134,000 to be restored. The policy will pay out on first death and Mr and Mrs B have confirmed that the need for it to provide family protection in that event and for their, now grown, children still remains.

And the policy has been kept in place, rather than the Trust surrendering it and possibly looking elsewhere. That's despite it having been given some information in 2017 to make it aware that, as things stood, the premium at that time of around £42 would only sustain the benefits for a maximum of around seven years and that action should be taken if their needs were otherwise and they wanted cover for life. And despite knowing since 2022 that the current £50 premium would likely only sustain the benefits for around five years, and that in

future at the 2027 review further change would almost certainly also be needed. So I'm not persuaded that the Trust would have likely surrendered the policy.

I recognise the Trust often did take up the options given to slightly increase the premium in line with inflation, which led to the current premium amount of around £50. But when asked if the Trust would have done anything differently in respect of taking up those optional increases beyond 2017 – and it being pointed out to them that the policy might not have otherwise reached the sum assured that it currently has in that case – Mr and Mrs B haven't suggested in response that the Trust would have done anything differently in respect of these.

In respect of the monthly premium paid, when bearing in mind Mr and Mrs B's initial reluctance in 2021 to take up the inflation option which seemingly led to the current premium, and that this has been kept the same since 2022 despite knowing the sum assured had and would likely decrease again in future, I don't think the Trust has been willing to pay, or would likely have paid, any more than around £50 overall for the policy. And I think it's important to point out here that if Aviva had provided the Trust with information about how much it would cost to maintain the sum assured for life at the tipping point in 2017 – at which point the premium was already around £42 – then I think this would likely have cost significantly more than around £50 per month. This is because when the tipping point is late on in the policy, as it was here, then that cost would be much more expensive. So I'm also not persuaded that the Trust would likely have done anything differently in respect of the policy premiums if it had been given more information in 2017.

In summary, for the reasons given, I'm not persuaded that even if Aviva had provided the Trust with more information in the way I've set out above, that it would likely have taken a different course of action. And, while I understand Mr and Mrs B 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 Mrs B, Mr B and Mr B as trustees of the Trust to accept or reject my decision before 17 September 2025.

Holly Jackson
Ombudsman