

## **The complaint**

Mr and Mrs M's complaint relates to a mortgage endowment policy they had with Aviva Life & Pensions UK Limited. They are unhappy that when they asked to surrender the policy, there were problems with the administration and communication by Aviva. This meant that they couldn't pay their mortgage off as they'd planned. In addition, it came to light that Mr M's date of birth was incorrect on Aviva's records, which meant the surrender value was adjusted and reduced significantly.

Mr and Mrs M's policy was taken with a different life assurance company, but it was at the time of the events complained about owned by Aviva and it is liable for its administration. As such, I will refer to Aviva throughout, even where actions were undertaken by the original life assurance company.

## **What happened**

In the summer of 1999 Mr and Mrs M sought financial advice from an independent financial adviser (IFA). It recommended a mortgage endowment policy with a target value of £52,000 over a term of 25 years. In addition to the life cover normally provided by such policies, it also provided critical illness cover and waiver of premium benefit. The policy was invested equally in the with-profits and managed funds. It was arranged on a low-start basis with the premium increasing each anniversary for the first five years.

The IFA provided Mr and Mrs M with an illustration of potential benefits for the policy. This document was produced by Aviva and sent to Mr and Mrs M's IFA. The illustration was produced using their correct dates of birth. However, when the application form was completed by the IFA Mr M's year of birth was documented incorrectly, which meant Aviva understood him to be four years younger than he was. The application was accepted and confirmation of this was sent to Mr and Mrs M. Their IFA returned the relevant documentation and told Aviva to start the policy in November 1999.

The policy schedule that was issued shortly thereafter contained the incorrect date of birth for Mr M and confirmed that proof of age had not been provided. The premiums documented in the schedule were slightly lower than the premiums detailed in the illustration Mr and Mrs M had been provided with.

In March 2023 Mr and Mrs M were provided with the surrender value for their policy. As it was sufficient to clear their remaining mortgage balance, they asked to surrender it. This didn't happen immediately as the identification verification for Mr M failed, as Aviva didn't have his correct date of birth. Mr and Mrs M were asked to provide documentation and the problem with Mr M's date of birth was identified.

Following the error with Mr M's date of birth, Aviva recalculated the surrender value on 17 April 2023 to reflect the higher benefit costs because Mr M was older than it had thought, but using the actual premium paid. This reduced the surrender value by around £7,000. Mr and Mrs M paused the surrender process in May 2023. It completed at the end of August 2023.

Mr and Mrs M complained about the delay in the surrender process and the poor service they had received. In addition, they were unhappy that the value of the policy had been reduced because Mr M's date of birth had been recorded incorrectly when the policy was set up.

Aviva responded to the complaint in a letter dated 6 June 2023. Aviva confirmed that as the overseas location Mr and Mrs M resided in was considered a high-risk jurisdiction, they needed to receive documentation from them by post. However, it acknowledged that had it not delayed the process, all of the requirements would have been received by 30 March 2023, rather than 17 April 2023. While there had been a delay, Aviva confirmed the policy value had grown during that time, but was willing to consider reimbursing Mr and Mrs M for any losses they had suffered above the amount of the gain. Aviva apologised for the number of times Mr and Mrs M had to contact it and paid them £250 compensation for that and any loss of expectation they had suffered.

In relation to the incorrect date of birth issue, Aviva confirmed it had set the policy up using the date of birth it had been given for Mr M. As the date of birth used indicated Mr M was younger than he was, the amount charged for protection benefits had been lower than it should have been. As such, the policy value had been adjusted to take account of the additional costs. Aviva acknowledged that the date of birth was correct on the illustration Mr and Mrs M had provided and it said it couldn't establish with certainty why the discrepancy had not been noticed when the policy was set up.

Mr and Mrs M were not satisfied with Aviva's response and referred the complaint to this service. When they did so, they said they didn't think they should have to suffer for Aviva's mistake in recording Mr M's date of birth incorrectly.

One of our Investigators considered the complaint and upheld it. He concluded it was Aviva's responsibility to ensure it had accurate information about Mr and Mrs M. However, he also considered Mr and Mrs M should have informed Aviva earlier than they did that the date of birth for Mr M was incorrectly quoted in the letters they were receiving. As such, he concluded each of the parties should take some responsibility for the error, and so Aviva should recalculate the surrender value of the policy with it being responsible for the funding shortfall until 2008. The funding shortfall could be applied to the surrender value thereafter to reflect the cost of the benefits that should have been paid. The Investigator also endorsed the £250 compensation payment.

Aviva didn't accept the Investigator's conclusions. It highlighted that Mr and Mrs M had signed the application form declaring all of the information contained in it was correct and their IFA's role would have been to check that it was. Aviva then set the policy up based on the information it had been given – it had not made a mistake when it set the policy up. Following that happening, Mr and Mrs M were sent the policy documentation which detailed the incorrect date of birth, but neither they nor their IFA had corrected the mistake that had been made on the application. Furthermore, regular correspondence was sent to Mr and Mrs M thereafter which again documented the incorrect date of birth, but on none of those many occasions did either of them contact it to correct the error. Aviva suggested the complaint should rightly be against the IFA who had submitted the incorrect application. Aviva asked that the complaint be referred to an Ombudsman for review.

Mr and Mrs M also didn't accept the Investigator's conclusions. They said they had provided a clear and fair representation of information from the outset, including providing the correct date of birth to Aviva. As it had had this information for 23 years, it was unreasonable for them to be held responsible for Aviva's error and bear the consequences of not noticing it earlier. They confirmed that they had not noticed the error in the letters sent to them and had trusted that Aviva would have done what it should have.

I issued a provisional decision on 6 March 2024, setting out my conclusions and reasons for reaching them. Below is an excerpt.

*'I will firstly comment on the matter of the delay in the surrender process up to the point Aviva identified the problem. This process started on 2 March and ended 17 April 2023. Aviva has acknowledged causing 18 days of delay in this process when it was deciding what information it needed from Mr and Mrs M, due to general concerns about their overseas location. Aviva was asked for evidence to support its statement, but it did not provide it. As such, I can't confirm that this was the only delay. That said, given Mr and Mrs M needed to provide hard copy identification documents from an overseas location, 28 days for the entire process doesn't seem an unreasonable timescale.*

*Aviva has paid Mr and Mrs M £250 compensation for this delay. That, along with Aviva's offer to consider any other losses, would seem appropriate in the circumstances. However, if Mr and Mrs M believe Aviva delayed the process by more than 18 days, they should in response to this provisional decision set out what they think the delay was and provide supporting evidence for their conclusion.*

*Mr and Mrs M have put forward that the date of birth error was Aviva's fault and, therefore, it should be responsible for the consequences of that.*

*At the time Mr and Mrs M took out their policy consumers were given the choice of proving their dates of birth at application or when they made some form of claim under the policy. The majority of consumers chose the latter option, as Mr and Mrs M did. I have looked at the documentation in this case and I can't agree that Aviva made a mistake when it set up Mr and Mrs M's policy. It set the policy up using the information it was provided with on the application form. That was perfectly acceptable at the time and normal industry practice. I would also point out that at the time, the electronic systems that would now allow Aviva to check the information it was provided with on the application, did not exist.*

*Mr and Mrs M have provided a copy of the illustration they were given by their IFA before the application was submitted. They've pointed out that the correct date of birth was used for this document and so Aviva should have been aware that there was an error on the application form. I can understand why Mr and Mrs M think this, but that is not the case. Aviva would produce illustrations when requested for IFAs, but there was no guarantee whether any particular policy would be sold. In addition, as it was not responsible for evidencing the sale was suitable or that the recommended policy had been applied for, there was no need for it to keep copies of the illustrations or to match them up with any applications subsequently made. In other words, Aviva wouldn't have been aware that the date of birth Mr and Mrs M's IFA had detailed for Mr M was wrong, simply because it had produced the illustration.*

*As such, I can't conclude that Aviva made a mistake when it set the policy up and used what it now knows as an incorrect date of birth for Mr M when setting and collecting the premiums. That said, Aviva has commented that Mr and Mrs M should have been aware of the error when the application was made because they signed the declaration saying all the information contained was correct. In addition, the dates of birth were detailed on the acceptance and policy documentation. I can see the point Aviva is making, but this was an IFA sale. As Aviva will be aware it is generally accepted that when an adviser is involved, consumers will place a level of trust in that adviser and will not double check their work. Part of the service Mr and Mrs M would have received was the IFA checking that the policy had been set up correctly. As such, I don't consider that Mr and Mrs M were in any way lacking in not noticing the error in the paperwork – they assumed that the professional business they had hired to assist them had done its job correctly.*

*I now come to look at what Aviva did when it became aware that Mr M's date of birth was incorrect. It corrected that on the policy and that was not an unreasonable thing for it to have done. It also recalculated the surrender value using the full costs, but the reduced premium.*

*I don't consider that in doing this Aviva treated Mr and Mrs M fairly as it is required to do by the Regulator. The error that has affected this policy was not Aviva's but equally it was not Mr and Mrs M's. In light of this I consider that the fair approach to this situation would have been for Aviva to have given Mr and Mrs M the option to pay the shortfall in premiums and have the surrender value calculated using Mr M's correct age using the premium they should have paid. The premium information is available from the illustration Mr and Mrs M have provided. I consider that Aviva should complete this calculation now and pay Mr and Mrs M the difference in the hypothetical surrender value and the actual surrender value. In practical terms, it would be for Aviva to recalculate the surrender value using the correct charges and premium as at the eventual surrender date in August 2023 and deduct the unpaid premiums from that sum.*

*Mr and Mrs M have asked that Aviva reimburse them for the mortgage interest they paid from when the policy should have been surrendered to the point it was. I can understand why Mr and Mrs M have requested this, but I don't consider that I can reasonably require Aviva to pay most of that interest. Aviva would be responsible for the mortgage interest for periods where it caused delays. That would include the 18 days during the period to the point the problem with the policy was identified. However, it was Mr and Mrs M that stopped the surrender process at that point. While I know they consider this was necessary because of Aviva's actions in reducing the surrender value, I don't agree. A consumer has a responsibility to mitigate any financial loss they might suffer and by delaying the surrender I can't find that Mr and Mrs M did that.*

*That said, if Mr and Mrs M want Aviva to reimburse them for the interest for the period of the delay, they should confirm they want to claim that sum in response to the provisional decision and provide evidence from their mortgage lender regarding the interest charged on the mortgage directly to Aviva. While Aviva has said the surrender value of the policy increased during the period, it has not evidenced this and so I don't consider there is any gain to be offset against mortgage interest figure.'*

I proposed that Aviva calculate what the policy would have been worth at the surrender date, using the correct date of birth for Mr M, but with the correct premiums paid throughout. From this sum the surrender value paid and the amount of the shortfall in premiums, would be deducted. In addition, I concluded that Aviva should pay any mortgage interest paid on that amount for the 18 days of delay in the surrender process if Mr and Mrs M wanted to claim it and could provide evidence of the interest accrued.

Mr and Mrs M said they accepted that the redress I had proposed was fair. They also confirmed that they didn't receive a copy of the policy and only received occasional alert letters, due to the lack of reliability of the postal service where they live. Mr and Mrs M also confirmed they could not provide evidence to claim mortgage interest for the period of the delay.

Aviva didn't respond to my provisional decision, although I am satisfied it received it.

### **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 neither party has provided any further evidence or comment on the merits of the

complaint, I see no reason to alter my conclusions.

### **Putting things right**

Aviva should pay Mr and Mrs M redress calculated as C minus D, where:

- A      The surrender value recalculated as at the surrender date in August 2023, using the correct dates of birth for Mr and Mrs M and using the full premium that should have been paid. The premiums paid should be based on those contained in the illustration produced before the sale.
- B      The surrender value paid in August 2023.
- C      A minus B.
- D      Calculate the amount of the additional premiums that should have been paid during the term of the policy to the surrender date. This should be based on the premiums detailed in the illustration produced prior to the sale.

In addition, Aviva should pay interest at 8% simple on the resultant sum from the date of surrender to the date of payment. If Aviva considers it is required by HM Revenue & Customs to deduct income tax from any interest due to Mr and Mrs M, it should tell them how much it's taken off and provide documentation they can use to reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint. In full and final settlement I order Aviva Life& Pensions UK Limited to pay redress as set out above in 'putting things right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs M to accept or reject my decision before 18 April 2024.

Derry Baxter  
**Ombudsman**