

## **The complaint**

Mrs J complains about the premium increases Aviva Life & Pensions UK Limited have advised her about after it reviewed her whole of life policy. She was unaware the policy was reviewable and unhappy with the premiums increasing suddenly.

## **What happened**

In 1996, Mrs J was sold a reviewable whole of life policy by an independent financial advisor (IFA). The policy was provided by Winterthur Life (now Aviva). Initially, the policy provided life cover of £37,000 for a monthly premium of £10.

Policy reviews were carried out in 2006, 2011 and 2016, the outcome of all of these was that no changes were needed to the policy and the cover continued at the original level.

A review was carried out in August 2021 and this showed that the monthly premium of £10 was no longer enough to support the level of life cover. Mrs J was given the option to increase the premium to £29.09 to maintain the level of cover. The letter said if the increase was declined then the policy would likely lapse before the next review in 2026 because the premium is insufficient to meet the cost of the cover.

Initially Mrs J didn't take any action to increase the premium but then agreed to increase it in May 2022, and this was backdated to October 2021.

In April 2022, Mrs J made a complaint. She was unhappy as she was sold the plan on the terms that it would never be reviewed, and the premium would remain the same throughout her life. She said that the recent review went against the terms and conditions that she agreed to.

Aviva responded to the complaint. In summary it said its records confirm the policy was sold following advice from an IFA, rather than a representative of Aviva. So, it is the IFA who is responsible for the advice that was given at the point of sale.

Following this Mrs J referred her complaint to this service for an independent review.

In May 2023, Mrs J informed this service she had surrendered the policy.

One of our investigators looked into the complaint. In summary he said:

- Aviva isn't responsible for the sale of the policy, as it was sold by an IFA.
- Aviva didn't do enough to give Mrs J clear, fair and not misleading information about the policy in the regular review letters it sent. Had she known in 2016 that the policy premiums were going to rise so significantly, she would've likely surrendered the policy then.
- Aviva should reimburse Mrs J the difference in the surrender value in 2016 and the value she actually received, and refund any premiums she has paid since 2016 with interest.

Aviva didn't agree with the outcome, essentially as it felt the policy had provided its intended purpose of providing cover at the initial level (without changes) for 25 years. But in order to help resolve the complaint it made Mrs J an offer. In summary it said it would:

- Pay the surrender value of £477.61 as at 1 October 2016, with 8% simple interest since then.
- Refund 50% of premiums paid towards the policy from this date (totaling £532.64), adding interest at 8% simple from each premium payment date.
- Then deduct the surrender value of £258.90 already paid to Mrs J from these amounts, which provides a loss figure of around £1,200.

This offer was put to Mrs J, but she didn't accept it. In summary she didn't think the amount offered was close to what she had invested. The policy had been running for approximately 40 years, and she expected to pay £10 a month for life for the original cover. She would like Aviva to reinstate the cover for her life and not till she was 80.

As no resolution could be reached the complaint comes to me to reach 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.

In reaching my decision, I've considered if Aviva met its regulatory obligations and I've set out below what I consider to be the relevant standards I've taken into account when making my decision:

- The FCA's Principles for Businesses, in particular Principle 6 and Principle 7;
- 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).

I acknowledge Mrs J didn't expect the policy to be reviewed and understood the premium would remain the same throughout her life. She believed that the 2021 review went against the terms and conditions that she agreed to. Aviva has provided the policy conditions, which it says are applicable to Mrs J's policy. It is clear from these that this is a reviewable policy, and premiums may need to be increased. This is supported by the information given in the policy reviews to show that the premium is reviewable. So I'm satisfied the policy can be subject to change and therefore I don't think that Aviva has acted unfairly when it reviewed the policy and proposed the changes it did.

It may be helpful if I explain how these types of policies broadly work in practice. The cost of providing cover isn't fixed and instead increases over time as the lives assured get older. At the outset, when charges are relatively low, the difference between the premiums being paid and the charges results in an investment pot being built up.

Over time, businesses will undertake reviews to ensure that the policy can continue to provide the chosen level of cover. They will look at a number of different factors such as the size of the investment pot, current mortality rates and investment performance. If they decide the policy isn't sustainable at its current premium, the consumer will usually be offered the option of increasing the premium.

This is what led to the changes proposed at the 2021 policy review. Having undertaken the review, Aviva's assumptions were that the policy was unsustainable on its existing

terms, and a higher level of premium was needed to maintain the policy's sum assured. This would undoubtedly have come as a surprise to Mrs J as there hadn't ever been any previous indication that the policy might need significant changes.

But this shouldn't have been the case, taking into account the standards I've quoted above, I think that Aviva ought to have provided Mrs J with clear, fair and not misleading information about the policy. The communications should have included key details about the policy such as its performance, the value of its underlying fund and any fees and charges that had been applied. Aviva should have provided this information within a reasonable time frame from when the standards I've quoted above began to apply. Given that the costs of the policy had overtaken the premiums being paid in late 2015, I think that Aviva should have ensured that they provided Mrs J with sufficient information within 12 months of this point, so by around the 2016 policy review.

Having considered the communications sent to Mrs J, I haven't seen that this level of information was provided. The 2016 review letter only set out that the policy was sufficient to continue to support the current sum assured until the next review date – which was in October 2021. There is some information to explain that there had been a lowering in expectations of returns from investment markets generally, but no explanation of the direct impact on Mrs J's policy, and certainly nothing to explain the costs of providing the cover had now exceeded the premiums being paid. Because this level of information wasn't provided, I don't think Mrs J was in an informed position about the policy or any possible steps she could take to mitigate future risks.

While not in full agreement, Aviva has made Mrs J an offer to recognise she wasn't provided with sufficient information about the policy at the 2016 review.

Essentially it has agreed to compare the surrender value Mrs J received with what she would have got if she surrendered the policy in 2016. It said it would pay her the difference. It has also offered to refund half of the premiums she paid after this date with interest.

While I note Mrs J's preferred outcome is for the policy to be reinstated and remain on its original terms – premiums of £10 and a sum assured of £37,000 for the rest of her life. However, this isn't a feasible option (even if reinstatement was possible) as the costs of providing the cover are significantly higher than the premiums being paid.

I've therefore considered the likely course of action Mrs J would've taken if she'd been put in an informed position in 2016. Aviva should have explained that the costs of the policy were higher than the premiums being paid, the impact of this would be that while the policy wouldn't require any changes at that time, it would likely need changes in the future.

This is a difficult decision as it's not completely clear what course of action she would've taken. Therefore, I must make a decision based on the balance of probabilities i.e. what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

When Mrs J first received a notice of premium increases being needed in 2021, she initially didn't do anything. But then she agreed to increase her premium, only to shortly afterwards decide to surrender the policy. She says she took the policy out to cover her funeral and provide a small amount for her family. She says the most recent reviews indicate the premium was going to keep going up to a level where it didn't seem worthwhile continuing, so this is why she took the decision to surrender the policy.

It seems Mrs J was reluctant to increase her premiums, especially as this wouldn't have guaranteed that there wouldn't be any further changes in the future. She also wouldn't have been given her preferred option of keeping her policy on its existing terms for life.

So, with the knowledge that the policy could be subject to significant changes in the future and wouldn't provide the level of cover she wanted for premiums of £10, I think it's more likely than not that she would have surrendered the policy in 2016 if she'd been put in an informed position about what the future might hold for the policy at this review.

I've then considered if she would've taken out alternative cover elsewhere. The cost of a comparable non-reviewable policy that wouldn't be subject to changes in the future, would've been significantly higher than what she was paying for this policy. It's important to note that after the 2021 review, even though she briefly increased her premium to maintain the policy's sum assured, this wasn't for long. I think this gives a good indication that the policy's costs were an important factor in Mrs J's thinking.

So, in the absence of any evidence to suggest that Mrs J would've wanted to pay much more than £10 per month for a policy on an ongoing basis, I don't think it's likely that she would have taken out a policy elsewhere. Therefore, I think it would be fair for Mrs J to also receive a refund of all the premiums she's paid since October 2016 plus interest.

The offer Aviva has made to pay the earlier surrender value is in line with my findings. The difference with its offer compared to the above is that it has only offered to repay half of the premiums from 2016.

I acknowledge Aviva's points about being on risk during this period, and if a claim had been made at any point, Mrs J would have received the value attributed to her policy. I accept Aviva was on risk during the period, but this was a position it was in because of the information failings I've described above. If Aviva provided sufficient information to Mrs J, then my finding is she would never have paid the premiums as I think she would have surrendered the policy. Therefore, it isn't fair to make a partial deduction for the cost of cover for a position Mrs J needn't have been in. So, I still think it would be fair for it to refund all of the premiums Mrs J has paid since the 2016 review.

### **Putting things right**

Aviva needs to pay Mrs J the October 2016 surrender value, plus 8% per year simple interest from that time until the date of settlement.

Aviva should also refund all the premiums she's paid since October 2016 plus 8% simple interest from the date each payment was made until the date of settlement.

The surrender value that has already been paid to Mrs J should be deducted from the above loss.

### **My final decision**

My final decision is that this complaint should be upheld and Aviva Life & Pensions UK Limited need to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 28 November 2025.

Daniel Little

**Ombudsman**