

The complaint

Mrs S complained about Aviva Life & Pensions UK Limited (known at the time as Sun Life, but I will refer to it as Aviva). Mrs S said she was advised to take a life assurance policy by a representative from Aviva. She said the policy wasn't suitable, in her circumstances at that time and so for this reason it was mis-sold to her.

Mrs S has been represented throughout her complaint by her daughter.

What happened

Mrs S applied for a whole of life assurance policy with Aviva on 11 November 1993. It was set up by Aviva to start from 22 November 1993, and she agreed to pay a premium of £18 every 3 months. From the outset Aviva stated the sum assured would be £1310 to pay for funeral expenses in the event of Mrs S's death.

Mrs S's daughter said Mrs S called Aviva to ask questions about the policy after she received a mail shot about it in the post. She said her mother didn't understand the terms and conditions of the policy but was persuaded to sign up for it by the representative on the phone. She said Mrs S's first language isn't English and so her understanding was as far as the advice given by Aviva.

Mrs S's daughter said her mother's recollections were that she was advised to take the policy during the telephone call, despite it not being suitable for her. Mrs S's daughter provided a witness statement that Mrs S signed providing these recollections. Mrs S said her mother had paid in more premiums than she is due to receive and because, in her opinion, the policy has been mis-sold, would like these repaid to her mother by Aviva. She complained to Aviva about this.

Aviva said in response that no advice was given by a representative to Mrs S according to its records. It said Mrs S completed a mail shot leaflet and sent it through the post. It said the leaflet was completed by Mrs S of her own accord and sent to Aviva, for it to set the policy up.

Aviva said it then sent a letter back to Mrs S asking for the first payment to be sent to it. It said it received this and duly set the policy up. It said it was at this point that it sent out a policy document and schedule to Mrs S. It said it couldn't see it had done anything wrong and Mrs S could have cancelled at any time. It said it was unable to uphold Mrs S's complaint.

Mrs S's daughter was not happy with Aviva's response and referred her mother's complaint to our service.

An investigator looked into Mrs S's complaint. He said he couldn't see anything that would persuade him Mrs S received financial advice. He said the evidence showed him Mrs S returned the application form and then the policy was set up through the post. He said he reviewed the information provided and couldn't see anything misleading or unclear. He concluded there wasn't anything that persuaded him the policy was mis-sold.

Mrs S's daughter is not in agreement with the investigator's view. She said her mother didn't need the policy and was mis-sold it on the grounds it was not right for her personal circumstances at the time.

As the parties are not in agreement, Mrs S's complaint has been passed to me, an ombudsman, to look into.

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.

I have independently reviewed Mrs S's complaint and have arrived at the same outcome as the investigator, for broadly the same reasons. I will explain why.

Mrs S said she received advice on the phone from Aviva to take the policy. Aviva on the other hand said the policy was set up through the post. As the parties are not in agreement here, I have looked into this further.

The sale of Mrs S's policy happened many years ago, so because of this, I am mindful evidence such as a call recording has not been readily accessible, and this is understandable. Similarly, recollections from the time in question have not been detailed in a way they would potentially be if the event complained about happened recently.

That said, I have been able to see sales documentation such as the application form completed by Mrs S, letters sent by Aviva along with policy documentation and this has been useful for me to try and ascertain what on balance, happened.

After reading through the documentation, I can see Mrs S did complete an application for the policy dated on 11 November 1993. Mrs S would have sent this back in the post and then would have received a letter from Aviva dated 19 November 1993. Within this letter from Aviva, it states:

"In order that we can prepare your policy, please forward within the next 14 days your cheque / P.O for £1 made payable to Sun Life Assurance Society Plc, in respect of the first premium."

Mrs S shortly after then received the policy information and her policy commenced on 22 November 1993.

I can't be sure what happened here and based on Mrs S's recollections I have no doubt she called Aviva as she has told our service she did, to ask questions about the policy. But I consider based on the documentation I have in front of me, the sale of the policy took place, through the post with Mrs S receiving no advice or a recommendation from Aviva about whether to take the policy or not.

I think, on balance, Aviva completed the sale by receiving the first payment from Mrs S for it. It then set the policy up. So, with what I have concluded in mind, even though Mrs S has told us she called Aviva to ask it questions about the policy, I don't think advice was given to her to take it. So, I don't think Aviva needed to consider her personal circumstances when it sold the policy to her, something that it would have been required to do through its regulatory obligations, if it had done so.

That being said even though I think Aviva sold the policy to Mrs S through the post without giving advice, it still needed to ensure Mrs S received information about the policy that was clear, fair, and not misleading. I have looked into this to see if it did do this.

I've reviewed the documentation Aviva has provided, this includes a schedule and product particulars document. Mrs S would have most likely been sent these documents when she was notified the policy had been set up on 22 November 1993. The documentation explained how the policy worked and the aim of it was to pay a lump sum on death. It is also explained that because the policy had a fixed sum assured and premium, it was possible that more could be paid in than paid out. So, after reading the documentation, it does seem to me that the policy was explained in a fair and balanced way.

I've considered what Mrs S's daughter has said about English not being Mrs S's first language and I acknowledge what she has said here. But I can see in Mrs S's statement, that she called Aviva to ask questions about the policy. So, on balance, I am satisfied after seeing this, that if there was anything Mrs S was unsure of, that she was aware that she could ask Aviva about it and knew how to contact them if need be.

In conclusion, I am satisfied Aviva did not give advice to Mrs S. I can also see it gave her information that was clear, fair, and not misleading, enough for her to make an informed decision.

I appreciate that my decision will be disappointing for Mrs S and her daughter, and I empathise with them regarding what they have explained are the circumstances here with the policy. But to uphold Mrs S's complaint, I need to make a finding that Aviva did something wrong, and in this case, I don't think it did. Based on everything I have read and the findings I have given, I don't think Aviva mis-sold the life assurance policy and so it follows that I don't uphold Mrs S's complaint.

My final decision

My final decision is that I do not uphold Mrs S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 26 September 2024.

Mark Richardson
Ombudsman