DRN-4976130

The complaint

Mrs H is unhappy with how Aviva Life & Pensions UK Limited acted in relation to the surrender of her unit-linked whole of life policies. Specifically, she says it gave incorrect information to her and it wrongly calculated their final bonuses. Though Aviva has apologised and paid Mrs H £150 for its poor communication, Mrs H feels this amount is insufficient.

What happened

Mrs H took out her 'Pacemaker 2' policies in August 1983 through Capital Life Assurance Society Limited. The policies were later transferred to other two businesses, and finally to Aviva. Each of the policies had a £5 monthly premium, payable up to age 65.

On 4 September 2023, Mrs H called Aviva to request the surrender of her policies.

Aviva issued a letter to Mrs H confirming it had paid her a surrender value of £22,796.04 on 15 September 2023.

Mrs H wrote to Aviva noting she was very disappointed with the surrender letter, because it had failed to show the relevant date or how the surrender value had been calculated.

Mrs H also explained that the policy terms issued to her in 1983 had clearly set out that a terminal bonus would be paid which included a proportion of the capital bond created by the first 16 contributions and that this terminal bonus would be expressed as a multiplier of the number of years paid into the policies. In her case, Mrs H explained that the multiplier for 40 years was x6; her total monthly payment was £20 per month and the capital bond was £320. This meant £320 should have been multiplied by 6, and given a final bonus of £1,920. Instead, Mrs H had only received a total bonus of £640.

Aviva replied to Mrs H on 11 October 2023, setting out the value of the four policies (which was the same), the total premiums paid, and the terminal bonuses applied to each policy.

Mrs H wrote back on 14 October 2023, explaining that the reply from Aviva had entirely ignored the issues she raised. She explained that when she first called Aviva she was wrongly told there was no final bonus for her policy at all. Though a bonus was paid, it hadn't been calculated in the way she was led to expect from the original policy terms.

Aviva treated Mrs H's reply as a complaint. It issued a final response letter dated 14 December 2023, in which it rejected the material complaint about the bonus payment.

Aviva maintained that the terms and conditions did not guarantee any bonus for the policies at all. It explained that each policy had received a £160 bonus. It had used the capital bond, totalling £80 or each policy (so £320 overall). However, the multiplier of 6 was not used. Instead, a lower 5% of the bond for each complete year in excess of 20 years had been calculated, totalling a further £320.

However, it did agree that the initial telephone call with Mrs H had been misleading, as its

call handler had wrongly said a bonus wouldn't apply, when in fact some bonus was paid. The confusion had arisen because Mrs H's policies were not in a with-profits fund – and that was when bonuses were routinely paid. It also apologised for failing to include the action date for the cancellation of the units when sending Mrs H the surrender value. For these errors, Aviva apologised and paid Mrs H £150 in recognition of the upset she had suffered.

Mrs H remained dissatisfied with Aviva's explanation of her bonus payment, and she brought her complaint to this service. She noted that at no time prior to the surrender had Aviva told her that bonuses could be calculated differently to what was set out in the terms and conditions. She had retained the policies up to the 40-year mark because of the multiplier being set out in the policy terms. In her view, Aviva's actions were underhand.

One of our investigators reviewed the complaint. Whilst he was sympathetic to the concerns Mrs H had about the policies, he did not believe Aviva had acted unfairly or contrary to the policy terms. He therefore did not think the complaint should succeed. He noted that though Aviva's means of calculating the bonus payment was commercially sensitive, he hadn't seen any suggestion that it had gotten the calculation wrong. It had also quickly corrected the misunderstanding with information given to Mrs H over the telephone – paying her appropriate compensation for that mistake.

Mrs H said she disagreed with the investigator. She felt that without any enforcement, businesses like Aviva can do whatever they like with policies, without any recourse at all. Mrs H also said that she cannot afford to pay anyone to undertake any forensic analysis of the bonus payment, so Aviva is able to get away without paying her what she is owed.

Our investigator did not change his view on the complaint. He recognised that Mrs H felt the policy wording confirmed she would receive a bonus based on a multiplier of x6, but the wording hadn't expressly guaranteed any bonus.

Mrs H still didn't agree. She said the bonus she'd received was nowhere near the sum she'd been led to expect when taking the policy out 40 years ago. In failing to properly challenge Aviva, this service has caused her to lose confidence in the financial services industry.

Aviva had no other comments to make. The complaint was then referred for review by an ombudsman.

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.

This service's role is to investigate disputes and resolve complaints informally, whilst taking into account relevant laws, regulations and best practice. In reaching my decision, I'll focus on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

It's also important for me to point out that we do not act in the capacity of a regulator. That remit falls to the Financial Conduct Authority.

I note the regulator's function here because the crux of this complaint relates to how Aviva has operated; specifically how it determined final or terminal bonuses for whole of life policies such as Mrs H's. However, though Mrs H may believe otherwise, it is not my role to determine how Aviva applies bonuses or command it to operate differently. Instead, I have

looked at whether it has treated Mrs H fairly in relation to what the policy terms say and the provision of information about its decision regarding the final bonus as it applied to the investment. And aside from the issues for which it has already paid compensation, I believe Aviva has behaved reasonably in the circumstances.

The original policy terms give an explanation of a final or terminal '*Bonus*', which explains that "*the amount of the Bonus that will be available will depend on many factors but a balanced assessment leads us to anticipate that the following scale **may** well be achieved….*". Thereafter a table of multipliers is given for the '*Bonus expressed as a multiple of the capital bond*', with 25 years at x1, 30 years at x2, 35 years at x4, 40 years at x6, and 45 years at x8 multiples.

I realise this table is something Mrs H placed reliance on as an expectation of the bonus she would receive for each policy. However, I am satisfied that it is clear that this wording does not form any binding guarantee in the terms that a bonus at any of the multiples will be paid. The wording is conditional. The policy documentation also reconfirms this by noting that:

> "***Bonuses***
>
> *A special feature of the Pacemaker 2 Plan is that on death or realisation of units after twenty years, a bonus **may be payable** [my emphasis]. The amount which will be available depends upon many factors but a balanced assessment leads us to anticipate the following amounts per module **may be paid** [my emphasis]…..*"

The terms and conditions otherwise only provide an express confirmation as to the surrender value, which says:

> "***5. Surrender Values***
>
> *The Policy will acquire a surrender value upon the receipt by the Company of the first Contribution which in whole or part constitutes an Invested Contribution. Provided all Contributions due have been received, the surrender value payable upon the written request of the person or persons entitled shall be the total of the Surrender Percentage of the Value of the Allotted Shares at the relevant date and any Bonus which would have been applicable to the Policy had the Life Assured died on the date that the written request was received by the Company. Provided all Contributions due have been received, an additional amount equal to a percentage of the Capital Bond shall be payable, such percentage being 100% where the period elapsed since the Commencement Date (excluding any periods during which Contributions have been deferred) is 20 years or over and reducing by 10% for each full or part year by which this period falls short of 20 years, provided that such percentage shall be 100% when the Policy is surrendered on or subsequent to the Premium Cessation Date.*"

Aside from the commitment to pay 100% of the capital bond where a policy is held for 20 years or more, there is no wording which compels Aviva to pay a bonus at a set value under the policy terms.

Overall, I have not seen any objective evidence which leads me to conclude that Aviva has acted contrary to the policy terms or treated Mrs H differently. Nor have I seen any suggestion that it gave any guarantee of the return Mrs H would receive in respect of a final bonus. Rather, the policy documentation issued in 1983 gave a possible projection of future terminal bonus rates.

I know Mrs H feels that we ought to be able to hold Aviva to precise account for its actuarial calculations of the final/terminal bonus. However, the decision to pay a reduced bonus was a commercial decision that Aviva took. I can't reasonably direct that Mrs H should receive a higher bonus. This service determines complaints on their individual merits. We do not have authority to carry out investigations into the management or governance of whole of life policies. As I have set out above, it is the FCA that acts in the capacity of regulator.

Finally, I note that though it rejected the complaint, Aviva has already paid £150 to account for the upset Mrs H has suffered following its communication about the policy, including the misinformation about no bonus applying at all during the telephone call, and the fact Mrs H had to ask Aviva to supply her with dates and information about the terminal bonuses.

As well as putting right any financial losses in a complaint (though there are none in this circumstance), we also consider any emotional or practical impact of any mistakes my by a business on a complainant. In doing so, we do not fine or punish businesses. It may be helpful for Mrs H to review to the guidance available on our website around the amounts and types of awards made in instances of upset, trouble, inconvenience and distress caused by businesses in the complaints we see at this service.

Considering the effect of the errors, I believe the payment of £150 was reasonable in circumstances where Mrs H was initially misled and thereafter had to specifically ask Aviva for an explanation. I can see from her clear explanations in her letters to Aviva how this caused her notable upset and frustration over a short-term period. The compensation payment is an amount I believe appropriate for the impact of one-off errors of this nature.

My final decision

I do not believe Aviva Life & Pensions UK Limited needs to do anything to resolve this complaint. I am therefore unable to uphold it or make any award to Mrs H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 9 December 2024.

Jo Storey
Ombudsman