

The complaint

Mrs G and Mr T complain that Aviva Life & Pensions UK Limited has overcharged them for the life and critical illness cover provided by a Homemaker Plus policy after their smoking status changed during the life of the contract.

As Mr T brought the complaint to us, for ease, I've referred mainly to him.

What happened

In April 2000, Mrs G and Mr T applied for a Homemaker Plus policy through a broker. The policy included life and critical illness cover. Mrs G and Mr T declared that they were light smokers and so Aviva offered cover on that basis.

Subsequently, in September 2023, Mr T got in touch with Aviva because he'd received a letter from it which set out how their premiums were allocated. Mr T told Aviva that he and Mrs G had stopped smoking around 18 to 19 years previously. He felt they'd been overcharged for their cover for a number of years given the change in their smoking status.

But Aviva didn't agree to refund any of the premiums Mr T had paid. It said that the policy could only be underwritten once – at the outset and that this was reflected in the contract terms.

Mr T was very unhappy with Aviva's decision and he asked us to look into his complaint. He provided product literature from the time which stated that a consumer should let Aviva know if they'd stopped smoking as it could improve the premiums Aviva could offer.

Our investigator didn't think Mr T's complaint should be upheld. She felt Aviva had acted in line with the terms of the contract.

Subsequently, another one of our investigators considered Mr T's complaint and obtained more evidence from Aviva. He didn't think it was likely that Aviva could have amended the policy premium once the policy was in force. But he concluded that even if Mr T had chosen to take out new cover on non-smoker rates - either when he initially stopped smoking or in 2023 – the premiums were likely to have been higher than the actual premiums Mr T had been charged for the original policy.

Mr T disagreed. In summary, he felt he'd provided evidence which showed that a smoker's status could be changed. He said they hadn't been made aware at the outset that the policy could only be underwritten once. And he felt he and Mrs G had been overcharged by Aviva for many years, given the actual risk they presented to Aviva. He considered Aviva's actions to be a breach of regulatory rules, principles and the law.

The complaint's been passed to me to decide.

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, whilst I'm very sorry to disappoint Mrs G and Mr T, I don't think Aviva has treated them unfairly and I'll explain why. In reaching my decision, I've taken into account relevant regulatory rules and principles, the policy terms, relevant law and the available evidence.

Aviva has provided us with a copy of Mr T's policy application form. This shows that he and Mrs G were asked whether they'd used any tobacco products in the last 12 months and that they'd answered 'yes'. They subsequently declared that Mr T smoked 0.5 cigars per day and that Mrs G smoked 0.5 cigarettes per day.

Based on the information given on the application form, I think Aviva was reasonably entitled to underwrite the life and critical illness cover based on Mr T's declared tobacco usage. These were the terms on which it agreed to provide the policy cover for a 25-year period. The application form set out 'Important Notes', which included the following:

'The Company's acceptance terms will be advised to you or your financial adviser in writing and we will await your agreement before taking any action to assume the risk, prepare the policy document or process the payment instruction.'

'Any changes to the information given before the policy comes into force must be notified in writing to the Company.'

Mr T's sent us copies of communications he had with his broker before the policy began in which he queried smoker rates being applied to the policy. So it seems he was aware that the policy was underwritten on smoker's rates and ultimately chose to proceed on that basis. The policy schedule makes it clear that the policy would cost Mr T around £187 per month for the full 25-year term.

I've carefully considered the policy terms and conditions, which formed the basis of the contract between Mr T and Aviva. There's no provision for a policyholder to be able to request an amendment to the cover terms or to the premium itself during the life of the contract. So I don't think that there was any contractual obligation for Aviva to review the premium during the life of the policy.

Mr T has sent us product literature which he says was issued prior to inception of the policy. This includes a section called 'Premiums'. This says: *'You should advise us if you give up smoking as we may be able to improve the terms we offer.'* He therefore believes this is evidence that Aviva could have re-rated the policy to reflect a change in his smoker status.

Aviva has provided us with a copy of commercially sensitive, confidential underwriting guidance for the Homemaker Plus policy. In brief, this indicates that premium alterations weren't possible for this particular product. One of Aviva's underwriters has also told us that they weren't aware of any amendments ever being made to policies which were already in force.

As such then, it seems to me that Mr T's premiums couldn't have been amended in line with his non-smoker status even if he had notified Aviva about this change when it happened. And as it seems that Aviva wouldn't have been in a position to amend the premium of any other customer in Mr T's position, I don't think I could fairly conclude that it's singled him out in any way or treated him unfairly.

Even if the premiums could have been amended to reflect a change in smoker status though, it seems Aviva was unaware that Mr T and Mrs G had stopped smoking until Mr T

got in contact with it in September 2023. I don't think it was required to regularly check whether Mr T was still smoking. It was open to Mr T to have made Aviva aware of the change several years earlier when he stopped smoking, especially if he'd believed this could impact on the price of the cover.

Aviva has told us that it may have been possible for Mr T to have cancelled his existing policy and take out new cover after his smoking status changed or in 2023. However, it's also told us that any new cover would have been underwritten based in part on Mr T's age at the time. So it says it's entirely possible that new cover would have cost Mr T more than his original policy. And if Mr T had taken out new cover in 2023 – when he and Mrs G were around 23 years older, it seems more likely than not that the premiums for life and critical illness cover would've been substantially higher than the original premium agreed in 2000. So I don't think this is an unreasonable or unlikely conclusion for Aviva to draw.

I appreciate Mr T feels that he's been significantly overcharged for his cover and I do sympathise with his position. But I don't think Aviva acted unfairly when it charged Mr T and Mrs G the agreed, contracted policy premium for life and critical illness cover throughout the life of the policy. And I don't think it acted unfairly when it decided not to retrospectively rewrite the policy; amend the premiums or offer any premium refund. Nor I have seen sufficient evidence of significant delays in Aviva's communications with Mr T which would lead me to conclude that Mr T was caused material trouble and upset. So I don't think there are reasonable grounds for me to make any compensation award for Mr T's distress and inconvenience. This means I'm not telling Aviva to do anything more.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr T to accept or reject my decision before 2 September 2025.

Lisa Barham
Ombudsman