DRN-5498580

The complaint

Mr S is unhappy with the administration of his Reviewable Whole of Life (RWOL) policy he holds with Aviva Life & Pensions UK Limited (Aviva).

What happened

Mr S took out a Reviewable Whole of Life (RWOL) policy with General Accident Life Assurance Limited which commenced in March 1995. I understand Aviva are responsible for the administration of Mr S' policy and so I will refer to them only throughout this decision.

The original benefit was £26,000 payable on death or critical illness, on a maximum basis. A premium of £30.02 per month was to be paid, with the benefit and premium to increase annually at 10%.

A copy of the terms and conditions of the RWOL have been provided to me, within this document it sets out:

> *"**20. Policy Review***
>
> *(a) A Policy Review will be carried out by the Company:*
> *(i) within three months prior to the tenth anniversary of the Commencement Date and thereafter every five years;*
> *or,*
> *(ii) where the Life Assured has attained age 70, within three months prior to each anniversary of the Commencement Date;*
>
> *. . .*
>
> *(b) If following the Policy Review the Company considers the Benefits selected under the Policy can be maintained until the next Policy Review without the need to increase premiums, the Benefits will be guaranteed until such time. The method of valuation shall be at the discretion of the Company.*
> *(c) If following the Policy Review the Company considers the Benefits selected under the Policy cannot be maintained until the next Policy Review the Policyholder shall have the option to increase the premiums to such a level as the Company considers can maintain the Benefits and the Benefits will be guaranteed until the next Policy Review.*
> *(d) If the option under Condition 20© is not exercised the Company will reduce the Benefit to such level as the Company considers can be maintained . . ."*

Mr S' monthly premiums, and the sum assured was indexed until 2003 when the premium had increased yearly to £58.15 per month, I understand the sum assured at this time was around £55,000. In 2005 Mr S' RWOL had its first review which it failed. Mr S was offered the option to either increase his monthly premiums to £101.73 per month or reduce the sum assured to £33,765. I understand the sum assured was reduced.

In 2010 the RWOL failed its second review, Mr S was offered the option of reducing the sum assured to £25,516 or increasing the premium to £79.78 to maintain the current level of

benefits. The sum assured was reduced, and the premiums remained at £58.15 per month. In 2015 the review also failed, Mr S chose to reduce the benefits to £19,128. He expressed his dissatisfaction with this in a handwritten note to Aviva.

In April 2016 Aviva wrote to Mr S, they said that they had been reviewing the policy incorrectly and offered Mr S a number of solutions to rectify things:

- Leave things as they were – so the premium and sum assured would be guaranteed until the next review. However, a change would likely be needed at the next review.
- Change the premium to what it would be if Aviva had reviewed the policy correctly - £77.16.
- Change the sum assured that it would have been if Mr S had remained at the current premium level and the reviews had been accurate. Increasing it from £19,128 to £19,174.

As Aviva didn't receive a response from Mr S they increased his sum assured to £19,174. Mr S' policy passed the review in 2020 and each year after, up to 2024. He received annual statements which provided him with the valuation of his policy.

Mr S referred a complaint to Aviva – he said that he was unhappy with the sale of the policy. And he was unhappy that the sum assured had reduced.

Aviva sent Mr S their final response letter on 12 April 2024. They didn't uphold his complaint. In summary they said that they had reviewed his policy in line with its terms and conditions. No further changes had been made to the premiums Mr S paid or the sum assured since 2016. The projections show that his policy would likely be maintained for another 6.75 years before any further changes would be needed.

Mr S was unhappy with the response and so referred his complaint to this service. An Investigator let Mr S know that this service couldn't consider the sale of the policy – because it hadn't been Aviva who sold it to him.

The Investigator asked Mr S why he had taken out the policy and what he needed the cover for. Mr S explained that he took the policy out mainly for the critical illness benefit whilst he was working as a taxi driver. This gave him peace of mind that should something happen he would have some financial support. Mr S stopped working in around 2017. Asked what he would have done, had he been told that his policy would likely need further changes at the 2005, 2010 and 2015 reviews Mr S said he wasn't sure.

The Investigator provided their assessment, they upheld Mr S' complaint. In summary the Investigator said that Aviva hadn't provided Mr S with sufficient information for him to make an informed decision about what to do with the policy at key points in its lifecycle. And, had they provided this information to him it's likely he would have surrendered the policy in 2017 when he stopped working. The Investigator asked Aviva to pay redress on this basis.

Aviva didn't agree and asked for an Ombudsman to consider the complaint. In summary they said:

- If Mr S no longer wanted or needed the policy following 2017 he could have surrendered the policy at any time. But he hasn't.
- Annual statements provided Mr S with information about the surrender value of his plan and how long Aviva expected his current premiums would support the sum assured.

- Mr S had received failed reviews and so he would be aware that once the sum assured could no longer be supported it's likely the premiums would have needed to be increased or the sum assured reduced.
- From 2019 annual statements included a transaction history which showed the premiums and cost of the policy.
- The 2020 review letter included the surrender value and explained that if the value shown in the projections were lower than the current value, the cost of providing the benefit until the projection date will be higher than the amount of premiums Mr S would pay until then. The values shown were lower than the surrender value.
- Aviva provided enough information for Mr S to reasonably decide whether to continue paying the premiums – which he has chosen to do.

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 I am upholding Mr S' complaint, I will go on to explain why below. Whilst I have considered everything that has been provided to this service, I don't intend on commenting on each item. Instead, I will focus on what I have determined are the key aspects of the complaint.

Mr S has made some points which refer to the sale of this policy. I'm not able to comment on whether or not this policy was adequately sold to Mr S because I can only consider the actions of Aviva. Aviva did not sell this policy to Mr S.

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. In reaching my conclusions, I've considered in particular:

- 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).

The key complaint point Mr S has made about his policy is that he is unhappy that the sum assured has decreased significantly.

I think it's helpful to explain firstly how RWOL policies generally work in practice. The premiums paid cover the cost of life cover and any charges. Anything above that is invested to build up a fund. Mr S's policy was taken out on a maximum basis. That means that most of the premium being paid was to cover the cost of the life cover and charges, and so only a small amount would be invested.

So, most of the premiums that Mr S has paid over the years have paid for the life cover he has had for that period. Had he passed away, or there been a trigger for the critical illness benefit during that time, the RWOL policy would have paid the sum assured. Only a small portion of the premiums were invested, which is why the surrender value has never been very high.

Generally, at the start, when the cost of life cover is lower, more of the premiums are invested. As time goes on the cost of the life cover increases as the policyholder gets older. Which means that it's likely there will come a time when the premiums paid no longer meet the costs of the life cover and charges on their own (the tipping point). The investment fund that has been built up is used to help pay the increasing cost of the life cover. However, there inevitably comes a point where the life cover costs exceed the premium and the investment fund is depleted. Unless the fund's growth outpaces the rise in the costs of the life cover.

Eventually the policy provider will conclude that the premiums being paid, and the fund value, are no longer able to support the level of cover. Therefore, to maintain the policy either the premiums being paid will need to increase, usually significantly, and are likely to continue to increase as the consumer gets older and the life cover cost continues to increase.

The opportunity for consumers to make decisions about key changes to the policy is a key event in the life of the policy. The decision becomes more difficult to make the longer the consumer pays into the policy and the options available to mitigate poor outcomes start to diminish. Information about a RWOL policy should be provided to consumers in a clear, fair and not misleading way. With information about the changes later down the line to the policy the consumer might decide on a number of actions:

- To adjust the terms of the policy earlier in its life. For example, by increasing premiums earlier, so more is paid over a longer time creating a smoothing effect. So, premiums will be higher than they were at the start of the policy, but not as high as they might otherwise have been at the point of a failed review.
- A consumer may decide that a policy is not worth maintaining at an earlier point and elect to surrender it.
- Or a consumer may decide that its worth maintaining the policy on its existing terms right up until the point the policy fails a review.

In broad terms I consider it was incumbent on Aviva to have provided the following information in a clear fair and not misleading way to enable Mr S to make an informed decision:

- A clear outline of the existing cover – including the sum assured and premiums.

- The current surrender value.

- The life cover costs (including administration charge).

- A clear explanation that the costs were no longer being met by premiums.

- A clear explanation of how long the policy was likely to be sustainable on its existing terms (reasonable approximations would suffice).

- Estimates of what the policy might cost at the point when the policy was likely to cease to be sustainable on its existing terms to give information that would allow Mr S to fully appreciate the risks and consequences of not taking any action.

- A clear explanation of the poor outcomes a consumer might face over the lifetime of the policy. This should include a clear outline of the levels by which premiums would need to increase (or the sum assured would need to decrease) to maintain the policy at that point (reasonable approximations or illustrative examples would suffice).

- A clear explanation of the options available to a consumer that were aimed at mitigating that outcome, together with the costs and benefits of each option (including increases in premium levels, decreases in the sum assured or surrender of the policy).

I've been provided with the annual breakdown of total premiums paid and total cost of the life cover of Mr S' plan. The total cost of the plan between March 2004 and 2005 totalled £767.63, the premiums paid were £697.80. So, at some point during this year the policy reached its tipping point.

I've considered the correspondence that was sent to Mr S within 12 months from the 2005 policy year.

The review letter provided Mr S with the current sum insured, monthly premiums, projected surrender values and costs of the life cover, though these projections don't appear to match the premiums Mr S was paying at the time. There is no clear explanation that the costs were no longer being met by the premiums being paid or outcomes a consumer may face or a clear explanation of the options available to Mr S to mitigate the long-term outcome.

So, I can't agree that Aviva provided Mr S with clear, fair and not misleading information within 12 months of the tipping point in 2005.

Mr S received reviews in 2010, 2015 and 2020. Aviva ought to have provided him with clear, fair and not misleading information at these key points of the policy too. I have considered the contents of these reviews. Whilst the 2015 review provides some projections based some options given to Mr S it doesn't provide an outline of what the likely changes would be to the policy in the future. In 2020 the review succeeded and so no options to change the plan were provided to Mr S. There was no information provided to Mr S about the costs needed to make the policy sustainable for life or any changes which would be due in the future or the level of those changes.

Aviva have argued that Mr S had some of this information across the reviews and statements over the years, and so he should have been able to piece the picture together himself. I don't agree that all of the information I have listed above has ever been provided to Mr S piecemeal or not. And, even if I thought it had – as I have set out above Aviva ought to have provided Mr S with a clear explanation, not lots of bits of information he needed to put together to infer meaning.

What would Mr S have done differently?

I've considered what, if anything, Mr S would have done differently if he'd been provided with all the information set out above. Had he been given clear information at the tipping point, and then at each subsequent review the options open to him would have been:

- Cash in the policy at the cash in value.
- Reduce the benefits.
- Increase the premiums to maintain the level of the sum assured.

Mr S has said, had he been provided with information about the future of the plan in a clear format he's not sure what he would have done. At this point he feels as though he has paid a lot of money into the plan and the surrender value is fairly modest in comparison. I appreciate it is difficult to look back in hindsight and think about what might have happened.

To do so I have considered Mr S' testimony, the evidence provided to this service and what actions Mr S did take.

Mr S has explained to this service that he required the benefits, in particular the critical illness cover, whilst he was working as a taxi driver. The cover provided him with piece of mind that should anything happen to him, he had a financial back up. So, I don't think Mr S would have cashed in the policy before he stopped working as a taxi driver in 2017.

He has struggled to afford the repayments at times, choosing in 2005 and 2010 to reduce the sum assured rather than increase the premiums he paid for that reason. So it's unlikely he would have taken the option of increasing the premiums at any point between 2005 and now.

I've carefully considered what Mr S would most likely have done once he no longer had such a compelling reason to keep the cover – when he stopped driving in 2017. The information Aviva ought to have provided Mr S with should have included a detailed explanation of the future of the policy, with a clear outline of the levels of which the premiums would need to increase, or sum assured decrease by with reasonable approximations. As this plan is on a maximum basis those approximations would have highlighted to Mr S that the policy would eventually not be sustainable for him, or the sum assured would be so small that it would not be worth him continuing to maintain the policy.

Given that Mr S has explained his need for the policy had reduced significantly in 2017 I think it's most likely that, given the above information, he would have chosen at that point, the end of the 2017 policy year, to surrender the policy. I have considered if I think Mr S would have sought cover elsewhere – but I don't think he would have done. Mr S has explained the main reason for the cover no longer applied, and the monthly premiums he was paying were already stretching. It's likely any standard cover at the time would have been unaffordable.

I appreciate Aviva have argued that the option has always been open to Mr S to surrender the policy if he wanted to from 2017. I agree with Aviva that Mr S had some information, like the surrender value and he had received failed reviews in the past so it's reasonable to suggest he knew that changes may need to be made to the policy in the future. But, he was not told what those changes might be or the likely scale of them. And he wasn't provided with options and explanations about how he could mitigate the impact of those future changes. Mr S did not have clear and fair information in order for him to make a fully informed decision. I think, had he been provided with such information, he would have made the decision to surrender the policy in 2017.

Putting things right

My aim when awarding redress is to put Mr S into as close to the position he would have been in, had Aviva acted fairly and reasonably. For the reasons set out above, had Aviva acted fairly and reasonably Mr S would have surrendered his RWOL policy in 2017. As such I direct Aviva to:

- Pay Mr S the 28 March 2017 surrender value of the RWOL policy. Plus 8% per annum simple interest from 28 March 2017 to the date of settlement.
- Refund all premiums Mr S has paid since 28 March 2017. Plus 8% per annum simple interest from the date each payment was made to the date of settlement.

My final decision

I uphold Mr S' complaint about Aviva Life & Pensions UK Limited and direct them to pay

redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 19 December 2025.

Cassie Lauder
Ombudsman