

The complaint

Mr F, as the sole remaining trustee and named beneficiary of the F Trust, complains that Aviva Life & Pensions UK Limited provided inaccurate information about the cost of the life cover within an investment bond held by the F Trust.

What happened

On the recommendation of a financial adviser, Mr F's late mother and father invested a lump sum into an investment bond with a business that has now been acquired by Aviva. The policy had an additional death benefit, payable on second death. This was paid for from the investment funds. The policy was written under trust for the sole benefit of Mr F. There were three trustees, Mr F's mother and father – who were also the settlors – and Mr F who was appointed an additional trustee at the time the policy was taken out.

In January 2021, Aviva wrote to Mr F's father, as the remaining settlor, to tell him they estimated the policy, and its death benefit, would last another 12 months. Mr F called Aviva and requested the investment be surrendered. Unfortunately, Mr F's father passed shortly after the policy had been surrendered.

In 2023, Aviva refunded additional charges they had incorrectly applied during the life of the policy. Mr F complained to Aviva the refund should have been paid to him and not his late father's estate. And that he and his late father wouldn't have surrendered the policy had Aviva taken into account the refunded charges when they reviewed the policy in January 2021. Mr F said he was unhappy that the policy documents didn't make it clear that the policy could reach a zero value and not pay out the death benefit. He thought the policy may have been mis-sold. Aviva did not uphold Mr F's complaint, confirmed they had not recommended the policy and that it had been put in place by a financial adviser.

Mr F brought the complaint to the Financial Ombudsman Service and one of our Investigators looked into things. The Investigator thought Aviva should pay Mr F the value of the refund plus 8% simple interest. But as the policy had been surrendered in January 2021, the Investigator didn't think it would be fair to ask Aviva to pay out the full death benefit. Mr F asked that an Ombudsman decides the complaint and it has been passed to me to consider.

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.

Mr F's late father received a review letter from Aviva in January 2021. This included the current value of the policy and an explanation that Aviva estimates the policy will last another 12 months. The same letter included options for the trustee's to reduce the level of additional life cover to keep the policy going for longer, or to reduce the additional cover to zero. This review letter was sent in addition to the annual statements issued Aviva. These statements also provided the fund value and details of the amount being taken from the investment fund to pay for the additional life cover. Shortly after receiving the January 2021 letter, the trustee's asked Aviva to surrender the policy as they wanted to get some money out of the

policy before it was totally depleted by the life premium deductions. Aviva paid the surrender value in May 2021. Mr F's father passed in late 2021.

In 2023 Aviva issued a rectification letter to Mr F's late father explaining they'd made a mistake applying the mortality charges to the policy. The letter was sent to an address Aviva held for Mr F's late father. Aviva later sent a cheque for the amount they'd overcharged to the estate of Mr F's late father. After our Investigator issued their opinion Aviva paid the rectification amount plus interest as 8% simple to Mr F as the sole beneficiary of the F Trust.

Mr F says that Aviva didn't make it clear to the trustees that the policy value could diminish to zero. Section 12 of the policy terms and conditions document Mr F has provided explains:

"(c) If the value of Units allocated to the Policy is insufficient to meet the Benefit Charge {the additional life cover} the Policy will be cancelled."

In this regard, I'm satisfied the trustees were made reasonably aware that the additional death benefit would be cancelled if the fund could not sustain the cost of the cover.

Regardless of the above, the crux of Mr F's complaint is that but for Aviva's overcharging, the life cover provided by the policy would have lasted more than 12 months from January 2021. Mr F strongly believes that if he and his late father had known this, they would not have surrendered the policy when they did. He says that this would have meant the full life cover benefit would have been paid in October 2021 when his father passed. In support of this, Mr F has provided medical evidence from his late father's GP that shows he was diagnosed with a chronic condition in March 2021 and his health gradually deteriorated before he passed in October. I empathise with Mr F and acknowledge his strong views in this regard. However, the regular statements Aviva provided his late father clearly explained the increasing cost of the life cover as his father got older. The statements showed the residual fund was diminishing as it was being used to pay the increasing cost of the additional life cover. As an example of this, the statement in July 2020 showed the fund value had halved over the last three-years, and the cost of life cover had increased by a thousand pounds a year in the same period.

The terms and conditions of the policy explain:

"(b) A Policy Review will be carried out by the company as set out below:

(i) where the Policyholder has selected Life Cover Benefit under condition 11 (b) within three months prior to each anniversary of the Commencement Date;...

(c) The Company will notify the Policyholder if the Company reasonably considers that the Life Cover Benefit selected under the Policy cannot be maintained until the next Policy Review."

In the circumstances of this complaint, I'm satisfied Aviva provided regular reviews. And, as I've explained earlier, these reviews gave a reasonably clear picture of what the value of the fund was and made it clear what charges were being deducted from the residual fund to pay for the life cover provided. I think it would be unfair and unreasonable for me to decide the information provided was mis-leading or unclear.

The July 2020 statement included information that the residual fund value was still almost twice what the annual cost of the life cover was at the time. Aviva's terms and conditions say they should notify Mr F's father when it became reasonably clear the life cover may not be maintained until the next review. I'm persuaded Aviva did this when they issued the January 2021 review letter. I've also previously explained the options Aviva provided. I'm satisfied

that, in this regard, Aviva acted reasonably and in line with the policy terms and conditions.

In 2023 Aviva issued a rectification letter to Mr F's late father explaining they'd made a mistake applying mortality charges to the policy – the cost of the life cover. The letter was sent to an address Aviva held for Mr F's late father. Aviva later sent a cheque for the amount they'd overcharged to the estate of Mr F's late father. After our Investigator issued their opinion Aviva paid the rectification amount plus interest at 8% simple to Mr F.

If Aviva had applied the correct mortality charges, I've considered whether it would have been more likely than not that Mr F and his late father would have decided not to surrender the policy in January 2021. Mr F says if they had not encashed the policy, it might still have been in force to pay out the full additional life cover on the death of the second life assured – his late father. With the benefit of hindsight, I acknowledge this might have been the case, especially as Mr F's father became frailer over the following months. But I also have to take into account that Aviva provided an option to reduce the level of life cover. Regardless of this, Mr F and his late father, as trustees of the F Trust, decided their objective was to get some money out of the policy before it was totally depleted by the life premiums.

Aviva's actuaries have calculated that if they had added back the units into the investment fund in 2021, they would have issued a further review letter in June 2021 warning that the policy would last another 12 months. Aviva have calculated the residual fund value in June 2021 would have been £3,630. This compares to the residual value of £3,727 in January 2021. So, in this regard, as the diminishing value of the residual fund was a key consideration for Mr F and his father at the time, I'm persuaded it's more likely than not they would have made the same decision to surrender the policy.

Mr F says there was a deterioration in his father's health, and he's provided detailed GP medical notes from 2021. These notes support that Mr F's father was diagnosed with a chronic condition in March 2021 and that he became frailer before he passed in October. The notes reflect there were times when Mr F's father was confused, dizzy and had fallen. If the rectification of the policy charges had taken place before 2021, Mr F and his father would still have had to decide whether to maintain the policy or surrender it. I think it's key and persuasive that they would still have been exposed to the possibility of the fund value diminishing to zero within the next 12 months. And, because they had previously decided to surrender the policy, rather than reduce the life cover, I'm persuaded it's more likely than not their decision to surrender the policy would have been the same. Therefore I've not upheld this part of Mr F's complaint.

My final decision

For the above reasons, I've decided that the payment Aviva Life & Pensions UK Limited has already paid Mr F is a fair and reasonable outcome to this complaint.

In respect of the payment they have already made, if Aviva Life & Pensions UK Limited considers that it's required by HM Revenue & Customs to deduct income tax from the interest they have paid Mr F, it should tell him how much it's taken off. It should provide Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F as trustee of the F Trust to accept or reject my decision before 18 June 2025.

Paul Lawton
Ombudsman