

The complaint

Mr C is unhappy as he doesn't think that Aviva Life & Pensions UK Limited ('Aviva') has correctly administered the reviewable whole of life policy he holds with it.

What happened

I've outlined what I think are the key events and points involved in the complaint below.

Mr C took out a reviewable whole of life – the Multiplan – policy in 1998 with Axa Sun Life Plc, although Aviva is now responsible for this complaint so I will refer to it throughout. The initial monthly premium and sum assured were respectively £28.20 and £100,000. The policy was taken out on a maximum cover basis and the schedule sets out that the sum assured was subject to indexation. The policy was subject to reviews, the first of which would take place on the tenth anniversary and subsequent reviews were then every five years until the insured's seventy-fifth birthday, after these would be when Aviva deemed appropriate.

Aviva hasn't been able to provide a copy of the 2008 review. And from what I understand, by the time of the 2013 review letter, due to indexation – which the letter said was optional and could be declined – Mr C's monthly premium and sum assured had respectively increased to £166.56 and just under £209,000. In the letter Aviva said, amongst other things, that reviews are to determine whether the level of cover can be sustained by the premiums and, if not, to provide alternatives. It said that in calculating the premium to sustain the cover, assumptions about the future are made. And, if not borne out in practice, cover or premiums may need to be adjusted at review dates. Mr B was told that his current monthly premium of £166.56 was insufficient to sustain the current level of cover until the next review and he was given the following options:

- Keep the sum assured the same and increase his premium by as little as possible to £233.58 – Aviva said that based on assumptions this would support the policy for five years and then a further increase would be required.
- Keep the premium the same and reduce the sum assured by as little as possible to £161,461 (the default option) – Aviva said that based on its assumptions this would last until the next review and then a further reduction in cover may be required.
- Keep the sum assured the same and increase the premium to £594.89 so that the cover is likely to be sustainable for life, making further increases less likely.
- Keep the premium the same and reduce the sum assured to £61,767 so that the level of cover is likely to be sustainable for life. Although this was dependent on whether assumptions made would be borne out in practice.

Aviva seemingly didn't hear back from Mr C, so the default option was applied and his sum assured was reduced to £161,461 for the same premium.

I understand that by the 2018 review the sum assured had increased to just over £219,000 for a monthly premium of around £262. And while Aviva hasn't been able to provide the 2018 review, this seemingly 'failed', as I can see Aviva wrote to Mr C in the way it did above to explain it hadn't heard from him. And that the default option, being a reduction in the sum assured to just over £153,000, would therefore be applied.

The 2023 review failed in a similar way to those above. It said that due to indexation Mr C's policy now currently provides a sum assured of just over £219,000 for a monthly premium of just over £443 and Mr C was given the following options:

- Keep the sum assured the same and increase his premium by the minimum possible to £464.04 – Aviva said this would support the policy until the next review and then a further significant change would be needed at future reviews.
- Keep the sum assumed the same but increase the premium to £931.69 so that there's less chance of changes at the next review.
- Keep the premium the same and reduce the sum assured by the minimum possible to £213,353 (the default option) – Aviva said this would support the policy until the next review and then a further significant change would be needed at future reviews.
- Keep the premium the same but reduce the sum assured to £109.393 so that there's less chance of changes at the next review.

The annual statement enclosed with the review letter also said, amongst other things, that Mr C's policy surrender value as at 1 September 2023 was £2,032. And that his policy is on a maximum cover basis, which meant it was designed to give cover at a low cost at the start, with the option to extend this for a higher premium without needing any new medical evidence. It said that the cost is initially lower to reflect the time of life when the insured needed cover but becomes more expensive at each review as they get older. And for many customers the size of the increases can come as a surprise and that's why it wanted Mr C to think about his policy now and consider taking action.

Aviva seemingly didn't hear back from Mr C, so the default option was applied and his sum assured was reduced to £213,353 for the same premium of £443.06.

On 30 November 2023, Mr C wrote to Aviva unhappy about the unfavourable review and the significant premium increases requested across recent years, which meant he had to reduce the sum assured. Mr C said that nowhere in the policy documentation does it say the premiums might rise to anywhere near what these have. Mr C said he has found cover elsewhere for reduced and fixed premiums. And that, as well as being about misrepresentation of the policy costs, his complaint was also his notice of cancellation and surrender of the policy.

Mr C wrote to Aviva again on 20 February 2024, enclosing a copy of his earlier complaint letter and chasing its response. Aviva received this on 23 February 2024. It sent Mr C its final response letter the same day – which acknowledged receipt of his 20 February 2024 complaint letter – not upholding Mr C's complaint.

Unhappy with this, Mr C referred his complaint to our Service and he added, amongst other things, that:

- The increase requested at the 2023 review was terrifying when he has paid around £50,000 in premiums.
- Nowhere in the sales material and documentation was there an explanation as to how much the premiums might rise by. Had this been made clear he wouldn't have taken the policy out.
- He would have reasonably expected the premium to increase close to the prevailing inflation rate. And, based on the Bank of England's calculator, a monthly premium of just over £28 in 1998 would now be just under £53.
- Aviva hasn't commented on, nor actioned, his surrender request.

I understand Mr C's policy then lapsed in June 2024, seemingly due to non-payment given his earlier cancellation and surrender request.

One of our Investigators reviewed the complaint and, in summary, they said that:

- While Mr C raised concerns about what was explained to him at the time of sale, as Aviva didn't provide the advice they'd only considered how it had managed his policy.
- The plan is reviewable as per the policy terms. But Aviva ought reasonably to have known since likely around late 2017 that significant changes would likely be needed to the premiums or level of cover as Mr C got older, as the cost of cover had started to outweigh the premiums paid. And they weren't persuaded Aviva's correspondence met regulatory obligations and standards of good practice. However, even if Aviva had provided Mr C with the information it should have, they weren't persuaded he would have done anything differently.
- As Aviva hasn't actioned Mr C's cancellation/surrender request, it should pay him the surrender value his policy would have achieved had it processed this in line with its normal timescales from the date it received his complaint (which included his request). And Aviva should refund any premiums Mr C has paid from then.
- Aviva should also pay Mr C £300 in compensation to make up for its errors.

Aviva accepted this. But Mr C didn't agree and asked for an Ombudsman to consider his complaint. He maintained that there is nothing in the original policy documentation to suggest premiums could increase significantly beyond inflation, when a reasonable person would assume these were connected to that rather than being subject to Aviva's whim. And Mr C said we haven't taken into account the occasions he called Aviva to reduce the sum assured and premiums as these were too expensive.

Because no agreement could be reached, the case has been passed to me for a decision.

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 think Aviva should put things right in the way I've set out below and for the following reasons, which are largely the same as those given by our Investigator.

While I've carefully considered the entirety of the submissions the parties have provided, my decision focuses on what I consider to be the central issues. The purpose of my decision isn't to comment on every point or question made, rather it's to set out my decision and reasons for reaching it.

In deciding this complaint and reaching my conclusions I've taken into account the law, any relevant regulatory rules including the principles and good industry practice at the time. And including, amongst other things:

- The FCA's Principles for Businesses, in particular Principle 6 and Principle 7 (PRIN).
- 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).

What is the fair and reasonable outcome in the circumstances of this complaint?

Firstly, I've seen nothing to suggest that Aviva or one of its appointed representative's advised Mr C to take out the policy. In which case, I'm not persuaded Aviva is responsible for the sale and what happened at that time. So my remit here is restricted to the actions Aviva could be responsible for, which means I can only look at whether it, as the policy provider, has acted reasonably in how it has administered Mr C's policy since this was taken out. Including whether or not Aviva is entitled to review the policy and whether it provided Mr C with clear, fair and not misleading information in its correspondence.

In respect of Mr C's comments about the premiums having increased significantly more than indexation at the policy reviews, there are two scenarios where the premiums can be increased. The first is at optional annual indexation and the second is at policy reviews, which are separate processes (albeit the results may be combined if due at the same time). Policy reviews focus on whether Aviva thinks the premiums paid can support the policy's sum assured until the next review date and the review letters set out the action required.

I can see that the applicable policy terms here set out, in summary, that the plan is reviewable and that if Aviva's actuary determines the benefits can't be maintained until the next review then it can increase the premium or reduce the level of cover. So Aviva is entitled to review the policy, including the premium and cover level, in the way it has.

Mr C has said that Aviva's original policy documentation didn't set out how much the premium might rise by. But the scale of any changes was dependent on investment performance and assumptions and could only be established at the point of reviews. And I've seen no evidence that the premium increases requested in Mr C's case wasn't a legitimate exercise of Aviva's commercial judgement. It was entitled to take a reasonable view of the risk posed to it and put a price on that. And I think it has done so following a typical process, run by industry professionals.

I think it's helpful at this point though if I explain more about how the plan works and what I think Aviva should have done, if anything. The key feature of this plan is that part of the premiums Mr C was paying throughout the years were to be invested to pay for the increasing costs of cover later in life. This is because for these types of policies, there's an increased likelihood of increasing cover costs as the policyholder gets older. While Mr C is unhappy with the effect of these increasing costs on the value of the policy, these are simply an inevitable consequence of the policy becoming more expensive as the policyholder gets older. This is very typical for these types of policies. It is also what allows these to be more affordable at the outset.

In the early years, when cover costs are low, part of the premiums are invested to build up a fund that can be used to help pay for the increasing cover costs in later years. At this stage, the premiums can meet the costs of the cover on their own. However, if the premiums remain at the same level, there inevitably comes a point where the cover costs will exceed the monthly premium and units in the investment fund need to be sold to meet the shortfall, reducing the investment fund value over time – unless the fund's growth outpaces the rise in cover costs.

Eventually, regular increases in the cost of cover will outpace the growth in the fund, so that as units in the fund continue to be sold, it will reach a point when the firm concludes that the premiums being paid and the fund value are no longer enough to pay for the costs of cover, as in Mr C's case. To maintain the policy with its existing cover, the premiums will need to increase, often substantially, and will continue to increase each year as the consumers get older and the cover costs increase accordingly, unless the sum assured has been substantially reduced.

At this point, there can be several poor outcomes for the consumer. It's possible that the investment fund will be almost completely depleted, leaving little surrender value. Any increase in premiums is likely to be very expensive and potentially unaffordable at a time when the consumer may be retired or close to retirement and have limited means to meet significant increases in costs. Alternatively, if the level of life cover has reduced substantially, the policy may no longer meet the consumer's objectives or ceases to be a cost-effective proposition.

The impact of the sudden and significant changes to the premium or level of cover that occur at the point the policy fails a review, can be mitigated by adjusting the terms of the cover earlier in the life of the policy. If, for instance, a consumer elects to increase premiums some years before the policy is likely to fail a review, this will have a smoothing effect over time, so that the policy is less likely to fail a review and the sudden and dramatic premium increases down the track can be avoided.

This gives the consumer the chance to set premiums at a more affordable and sustainable level for a longer period – even for the rest of their lifetime. The new premiums will be higher than they were at the outset, but not as high as they would otherwise need to become at the point the policy fails its review.

Alternatively, at that earlier point, a consumer who is faced with significant increases in premiums or decreases in the level of cover down the track might decide the policy itself is no longer cost effective, or that it is failing to meet its objectives, and elect to surrender the policy. In other cases, a consumer might decide that it is worth maintaining the policy on its existing terms right up to the point that the policy fails a review.

The opportunity for a consumer to make these decisions is a key event in the life of the policy. Given the impact of increasing cover costs on the investment fund, and in time on the premiums (or sum assured), consumers have important decisions to make about whether to retain the policy, increase the premiums and / or decrease the sum assured during the life of the policy. Those decisions become more difficult the longer the consumer pays into the policy and the options available for mitigating poor outcomes start to diminish. So it is in a consumer's interest to make key decisions at an early stage in the policy's life cycle, and to do so in an informed way, firms need to provide consumers with clear, fair and not misleading information.

Increasing life cover charges and what Aviva should have told Mr C

Looking at the available evidence, overall, I can see that by policy year 2017/2018 the total annual policy costs in this case were at just over £2,979 and had therefore overtaken Mr C's total annum premium at that point of £2,848. So, based on the available evidence, overall, Mr C's policy has been costing more than the premiums paid since around 2017/2018.

Taking into account the regulatory obligations I have set out above (PRIN) and what I consider to be standards of good industry practice at the time (including the regulator's views as expressed in FG16/8), and in any event what I consider to have been fair and reasonable in the circumstances, I'm satisfied that Aviva should have taken steps to ensure it communicated information to enable Mr C to evaluate the impact of the increasing costs of cover on his policy and the options available to him in a clear, fair and not misleading way. This needed to include the risks, costs and benefits associated with those options, as well as giving him clear timelines for the making of decisions where applicable.

In my view, this is something that Aviva reasonably needed to do within 12 months of the tipping point being reached – and as I've said, I think it's likely this point occurred in policy

year 2017/2018. By giving Mr C clear information about how much the policy was costing and allowing him to compare those costs with the premiums being paid, Aviva would've been acting consistently with the guidance at FG 16/8 that firms provide "*regular communications*" with customers – and to ensure that, in their communications, that "*firms [include] sufficient and clearly explained details regarding the performance of the product, its value and the impact of fees and charges*". Such communications also needed to specifically set out the "*value of any premiums paid in over that period*", and "*charges incurred over the period in monetary figures*", including "*major components and the charge to the customer for benefits such as life cover and guarantees*".

What information did Aviva give Mr C?

As the policy was reviewed in 2018, which was around the time the tipping point had been reached, then either within that review letter itself or within a reasonable timescale afterwards, Aviva had an opportunity to provide Mr C with clear information to enable him to consider his options and make a timely decision. Particularly given that, with each year that passed, cover costs would likely continue to increase, making any potential mitigating steps more costly than these otherwise would be over time.

I think Aviva should've provided the information I previously outlined in a clear and accurate format, along with clear information about the options available to Mr C, together with the costs and benefits as well as time frames for reply. And not in a passive way that required the consumer to draw important inferences for themselves. Even if precise numerical information about the costs of those options could not be given, then at the very least I would expect to see reasonable approximations or illustrative examples so that he could reasonably appreciate the importance of considering his options at that point.

Aviva hasn't been able to provide the 2018 review letter for me to see what information this provided Mr C with around the tipping point. Looking at the review letters sent both before and after that time, I can see these provided some information. For example, that the reviews are to determine if Aviva can carry on providing the same level of cover based on the Mr C's current premiums and that it can't continue to provide this. And that the cost of cover will go up each year as it depends on the policyholder's age. But Aviva should have also given Mr C sufficient and clearly explained details to appreciate how much his plan was actually costing. While the 2013 review letter did set out two options for Mr C to make the policy sustainable for life, the 2023 review letter didn't contain that type of information. And there was no information in any of the correspondence I've seen about how the costs of cover had changed and that the gap between the premium and the charges had closed, for example.

In summary, I've not seen any correspondence where Aviva provided enough information about the cost of cover or a clear explanation that these were no longer being met by the premiums. Therefore, I think there was an imbalance of knowledge between Mr C and Aviva, which meant he couldn't make a fully informed decision about what steps he wanted or needed to take following the tipping point being reached.

What, if anything, would Mr C have done differently?

Had Mr C been given clear, fair and not misleading information at the above point, the options open to him would have been to surrender the policy for the cash in value, increase the premiums to maintain the sum assured, reduce the sum assured or take no action.

On balance and for the reasons set out below, having considered all the submissions and information to decide what, if anything, I think Mr C would likely have done if Aviva had provided him with all the information it should have around the time of the tipping point, I

don't think anything would have been done differently in the circumstances, for the reasons set out below.

Mr C said he took out the policy as he wanted to increase the cover payable if he passed away as he had one dependent child at the time. I understand from Mr C that, while his child was no longer dependent on him by the time of the tipping point in 2017/2018, he'd had a second child who was and is still dependent on him. So I think the need and desire for cover to leave a legacy for Mr C's family remained.

And, while I recognise that Mr C has more recently requested to surrender his policy in response to the 2023 review, he'd previously kept the policy in place despite being given some information to know that the premiums were no longer supporting the sum assured and that this could and would otherwise decrease, in the way it did in 2013 and 2018, for example. And despite knowing the sum assured could reduce further again in future and that the policy wasn't sustainable for life, given he hadn't chosen either of the options set out in the 2013 review to make it as such. So, while I appreciate Mr C's position, on balance I don't think his actions support that he would likely have sought to surrender the policy any sooner than he did if Aviva had provided him with the information it should have. Instead, all this suggests that the desire and need for the policy remained.

As mentioned, Mr C didn't choose to increase the premiums to those set out as required in the policy review letters to ensure its sustainability longer-term. And he didn't choose either of the two options given in the 2013 review to make the policy sustainable for life, such as increasing the premium to just under £595. And I think it's useful to note at this point that making the policy sustainable for life around the time of the tipping point would likely have required a much higher increase in premium payable than that requested to do so in 2013. So, even if Mr C had been given more information around that point about how to make the policy sustainable for life, for example, I can't say that he would have taken a different course of action.

In summary, I'm not persuaded that Mr C would likely be in a different position if he had been provided with the information he should have by Aviva. So I'm not asking it to do anything in respect of this.

Mr C's policy cancellation/surrender request

I recognise Aviva has said that having checked its systems it didn't receive Mr C's late 2023 complaint letter – which included his initial request to cancel/surrender his policy – until 23 February 2024, after he'd resent this to it in late February 2024. But, while Aviva did then respond to Mr C's complaint, it didn't address or action his cancellation/surrender request that was contained within that when it should have at that point. And, while I understand Mr C's policy has since lapsed and Aviva has since accepted it didn't do the above, I think this error and the fact Mr C has been waiting for his surrender request to be actioned for a significant amount of time has understandably caused him frustration and added to his strength of feeling. So I think Aviva should pay Mr C £300 in compensation to make up for this – I think this is a fair and reasonable amount in the circumstances.

And, in addition, to put Mr C back into the position he would now likely be in if Aviva had actioned his cancellation/surrender request in the way I think it should have, I think Aviva should do the following:

- A. Calculate and pay Mr C the surrender value his policy would have achieved if it had actioned his surrender request in line with its normal service level agreement timescales for this from the date it received his complaint/surrender request, which based on the available evidence I think was likely on 23 February 2024.

To this it should add 8% simple interest per year from the date of surrender until the settlement date.

- B. Calculate and pay Mr C a refund of any premiums he has paid since the date I think Aviva likely first received his above complaint/request on 23 February 2024.

To this it should add 8% simple interest per year from the point of payment until the settlement date.

Aviva should provide the details of its redress calculation to Mr C in a clear, simple format.

Income tax may be payable on any interest paid. If Aviva deducts income tax from the interest it should tell Mr C how much has been taken off. Aviva should give Mr C a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

My final decision

For the reasons given above, I think Aviva Life & Pensions UK Limited should put things right in the way I've set out above. I'm not asking to do anything more than this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 31 December 2025.

Holly Jackson
Ombudsman