

The complaint

Mr and Mrs Y, in their capacity as power of attorneys for Miss Y, have brought a complaint on her behalf regarding the handling of Miss Y's Over 50s Life cover policies with Aviva Life & Pensions UK Limited ("Aviva"). The power of attorneys have specific concerns about the cancellation of the direct debits and whether Aviva managed both policies correctly.

What happened

Miss Y's Over 50s Life cover policies were established under a trust in 2013, with Miss Y named as the only trustee. She had known health issues at the time, and the policies were set up in trust to provide structure around the management of her affairs. A lasting power of attorney was registered for Miss Y on 9 December 2014, appointing Mr and Mrs Y as her attorneys. However, the trust deed made clear that instructions in respect of the policies could only be accepted from the trustee, Miss Y.

Miss Y later moved into residential care and her previous property was sold. In March 2019, Aviva applied a "gone away" marker to Miss Y's former address after correspondence sent there was not reaching her. Aviva was not provided with an alternative correspondence address, and no additional trustees were appointed under the trust.

Premiums for both policies were paid by direct debit. Aviva's records show that the last amendment to the direct debit instructions took place on 25 July 2023 and that the direct debit was recorded as "cancelled by the bank - client's request". As a result of premiums no longer being paid, both policies lapsed in accordance with their terms at the beginning of August 2023.

In its subsequent correspondence, Aviva explained to the power of attorneys that it had been unable to issue correspondence about the failed premium payments because it held no active address for Miss Y and there were no additional trustees authorised to act under the trust. Aviva also confirmed that, once lapsed, the policies could not be reinstated.

Mr and Mrs Y expressed dissatisfaction with Aviva's position. They raised concerns about Miss Y's health, questioned whether she could realistically have cancelled the direct debit herself, and said they did not believe Aviva had taken sufficient steps to manage the policies appropriately. They also provided information about Miss Y's medical circumstances and copies of relevant documents for consideration. As they remained unhappy, the complaint was referred to this service.

An investigator considered the complaint, reviewing the policy documentation, trust deed, Aviva's system notes, correspondence between the parties, and information obtained from Miss Y's bank, which had confirmed that, due to the passage of time, it could not provide further detail about why the direct debit was cancelled, beyond confirming the date of the amendment. The investigator concluded that Aviva had applied the trust and policy terms correctly, had previously explained to the attorneys that it could not accept instructions under the Lasting Power of Attorney ('LPA'), and that there was insufficient evidence to show Aviva had cancelled or caused the cancellation of the direct debit. The investigator therefore did not recommend that the complaint be upheld.

Mr and Mrs Y did not accept the investigator's conclusions and asked for the complaint to be referred to me for a final 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.

I appreciate the strength of feeling they have about what has happened, particularly given Miss Y's health and vulnerability. I recognise that this outcome will be very disappointing for Miss Y. However, having considered everything, I agree with the investigator's conclusions for broadly the same reasons.

The first issue I have considered is whether Aviva could have acted on instructions from Miss Y's attorneys under the lasting power of attorney. Although Miss Y had known health issues, the trust was structured so that she was the sole trustee, and the trust deed restricted Aviva to accepting instructions only from the trustee. The power of attorneys have themselves acknowledged that the trust was not set up in a way that properly reflected Miss Y's circumstances, and that this affected their ability to act on her behalf. In those circumstances, I think it is reasonable to conclude that the limitations of the trust arrangements were known, or ought reasonably to have been known, well before the difficulties later arose.

Importantly, by 2021 Aviva had clearly explained to the power of attorneys that it could not accept instructions under the LPA in respect of the trust. Its correspondence at that time advised that legal advice should be sought if changes to the trust or trusteeship were required. On the balance of probabilities, I think this made the position clear and gave the attorneys an opportunity to address the issue before the policies later lapsed.

Aviva was not made aware of any agreed changes to the trust arrangements, nor was it provided with details of any additional trustees or an alternative correspondence address. Against that background, and particularly given the "gone away" marker applied in March 2019 following Miss Y's move into residential care and the sale of her property, I can only conclude that Aviva could not reasonably have known how to contact Miss Y. In those circumstances, I am satisfied that Aviva acted appropriately in adhering to the trust terms and requiring valid trustee instructions.

The second issue concerns the cancellation of the direct debits. The evidence shows that the direct debit instructions were amended on 25 July 2023 and that Aviva's system records this as "cancelled by the client". Following referral of the complaint to this service, Miss Y's bank confirmed that, due to the passage of time, it could not provide further evidence explaining why the cancellation occurred. There is therefore no independent evidence showing who initiated the cancellation or the precise circumstances in which it took place.

Mr Y has suggested that Aviva may have allowed the direct debit to be cancelled in order to benefit from premiums already paid. I understand why, given the wider context, he finds this troubling. However, when I consider this suggestion on the balance of probabilities, I find it to be a leap that is not supported by the available evidence. There is no indication in the documentation that Aviva took any step to cancel the direct debit, nor is there evidence that it acted outside the policy terms or its usual processes. The fact that the bank is now unable to clarify the position does not, in itself, allow me to conclude that Aviva acted improperly.

Bringing these points together, I can only conclude that Aviva acted in line with its contractual and legal obligations. It applied the trust and policy terms correctly, explained the limitations of the LPA to the attorneys in advance, was not notified of any changes to the trust arrangements, and there is no evidence to show that it cancelled or caused the cancellation of the direct debits. While I recognise the difficult circumstances and the impact this has had on Miss Y, I do not find that Aviva failed in its responsibilities.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs Y on behalf of Miss Y to accept or reject my decision before 3 March 2026.

Farzana Miah
Ombudsman