DRN-5827597

Financial Ombudsman Service

The complaint

Mr C's complaint relates to a mortgage endowment policy he had with Aviva Life & Pensions UK Limited. He is unhappy that Aviva didn't explain to him that surrendering the policy before the maturity date could make it non-qualifying and so create a tax liability.

What happened

Mr C took out his mortgage endowment policy in 1999. It was a unit linked policy with a term of 25 years and was due to mature in December 2024.

The monthly premiums charged on the policy were:

Date	Monthly premium	Reason for change
Policy inception	£161.44	
28 January 2004	£171.44	Addition of a life assured
28 January 2015	£174.83	Policy review

Section 6.2 of the policy terms and conditions deals with policy reviews:

We will review your policy on the first policy review date shown in the schedule, and on any further dates we see fit.

…

*If we recommend that you increase your premium, you must write to us within one month to let us know if you are going to increase the premiums. If **necessary**,* [my emphasis] *we will extend the term of your policy so that the maturity date is at least ten years from the date the premium increases. We may also increase the sum assured. These changes will be made to make sure that your policy is still a 'qualifying policy' (see condition 8.2).*

Section 8.2 of the policy conditions relates to qualifying policies and states:

Any changes you make to your policy, or any options you choose to exercise, must still allow your policy to meet the conditions of a qualifying policy. The conditions for qualifying policies are laid down in Schedule 15 of the Income and Corporation Taxes Act of 1988.

If the policy does become non-qualifying then the person who receives the proceeds may have to pay tax to the Inland Revenue when we pay a benefit.

Mr C's mortgage interest rate product was due to end in the spring of 2024. In order to avoid high interest rates until the endowment matured, or being locked into a new interest rate product beyond the maturity date, Mr C decided to repay the mortgage. In February 2024 Mr C started the process for surrendering the endowment policy.

At that time, Mr C was told by Aviva that there would be no charges if he surrendered the policy before the maturity date. However, the policy was assigned to his mortgage lender, and he would need to get the assignment released before the surrender could happen.

The policy was surrendered in April 2024. On 4 June 2024 Aviva wrote to Mr C and informed him that by surrendering the policy he had incurred a chargeable gain. Mr C complained as he understood the policy was qualifying (that it qualified under HMRC rules for the proceeds to be paid tax-free) and so there should not have been a chargeable gain.

Aviva responded to the complaint on 7 August 2024. It said that as the premium increased in January 2015, less than ten years before the surrender date, it made the policy non-qualifying and there was a chargeable gain. Aviva apologised for not having told Mr C that surrendering the policy early would create a chargeable gain. It paid him £150 because it had not told him about the change of status and for the inconvenience this caused him.

Mr C was not satisfied with Aviva's response and referred his complaint to this Service. He said that if he had been told that the policy would not be qualifying if he surrendered it early, he would not have done so.

When Aviva was told the complaint had been referred to us, it increased its offer to Mr C to £200. Mr C didn't accept the revised offer and so one of our Investigators considered the complaint. He upheld the complaint as he was satisfied that had Mr C been told he would incur a tax liability if he surrendered the policy early, he would not have done so.

Aviva didn't accept the Investigator's conclusions and said that the policy had not been non-qualifying. The Investigator asked Aviva for clarification, but it did not respond. As such, the Investigator decided the complaint should be passed to an Ombudsman for consideration.

In simple terms, in order for a policy to be considered qualifying:

- The term must be ten years or more.
- Premiums must be payable annually or more often until the end of the term.
- The total premiums payable in any twelve months must not exceed:
    - Twice the premiums in any other year.
    - One eighth of the total premiums that would be payable if the policy were to run the specific term.
- The sum assured must be at least 75% of the total premiums payable.

When the complaint was passed to me, we asked Aviva to confirm whether the policy was qualifying or not, based on the qualifying rules. It did not do so. It said that the policy was non-qualifying due to section 6.2 of the policy terms and conditions.

Mr C has provided evidence that he has declared the chargeable gain to HM Revenue & Customs (HMRC), although it is not clear whether he has submitted his self-assessment tax return.

I issued a provisional decision on 2 September 2025, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'*Aviva has said variously that the policy was and was not qualifying. I have considered the section of the terms and conditions it referred us to in order to evidence that the policy was non-qualifying. Aviva appears to be interpreting this policy term as meaning that if there is a premium increase in the last ten years of an endowment policy being in force the policy will become non-qualifying. However, the condition actually says that if the policy becomes*

non-qualifying due to a premium increase, Aviva would make changes to the policy to make it qualifying again.

The issue in this case is the premium increase in 2015, which was less than ten years before the surrender date. The last premium would appear to have been paid on 28 May 2024, so I have looked at the premiums paid in each of the ten years before the surrender. In the final nine years the policy was in force the premiums amounted to £2,097.96. However, in the first of the ten years, the premium changed partway through the year, and so the total premiums paid amounted to £2,074.23 (assuming the premium changed seven months into the payment year).

In order for the 2015 premium change to have made the policy non-qualifying the premiums paid in the last nine years would have needed to be at least double that paid in the first year. Based on the monthly increase of £3.39 that would not be possible and clearly, looking at the above figures, the qualifying rule regarding premiums was not breached by the 2015 premium increase.

I have also considered the other requirements for the policy to have been qualifying, and it would seem that the policy met all of those requirements. As such, it appears that Aviva incorrectly concluded the policy was non-qualifying, it misinformed Mr C, and it should not have issued the chargeable gain certificate.

If Aviva disagrees with my assessment, it should provide an explanation of why. When responding, it should do so in reference to the qualifying rules, not the terms and conditions of the endowment policy as it has before.

When determining the appropriate redress for an error made by a financial business, we aim to place a consumer in as close a financial position as possible to that which they would have been in had the mistake not happened. In this case, that is very simple – Mr C should not have been told he had a chargeable gain to declare to HMRC.

Mr C has evidenced that he has started his 2024/2025 self-assessment tax return and declared the chargeable gain from the endowment policy. The calculation he has provided shows that he has a tax liability for the year due to the chargeable gain from the endowment policy.

In the first instance Aviva will need to issue a letter to Mr C confirming that it was incorrect when it issued the chargeable gain certificate, which Mr C can use with HMRC if needed. The information Mr C has provided indicates that Mr C may not have submitted his tax return for 2024/25 yet. If he has not, the tax liability situation can be resolved by him removing the chargeable gain before he submits the return.

In the event that Mr C has already submitted his return, it may still be possible to change the return. I have contacted HMRC and it confirmed that in exceptional circumstances it will allow a change to be made after the return has been submitted and processed. So, Mr C will need to write to HMRC explaining the situation and enclosing a copy of my final decision and the letter from Aviva confirming the chargeable gain certificate was issued in error. HMRC will then consider whether the circumstances are such that it would be appropriate to change the return and remove the chargeable gain. If HMRC agrees to change the return, that will resolve the matter of Mr C having a financial loss due to Aviva's mistake.

If HMRC decides that it will not allow the change to the tax return, Mr C will need to provide a copy of that refusal to Aviva and his SA302, setting out the calculation of his tax. Aviva should then pay Mr C the amount of tax he has had to pay due to having to declare the chargeable gain. If Mr C has already paid the tax calculated, he should provide confirmation

of when that happened, and Aviva should add 8% simple interest to the amount of tax being reimbursed from the date of the payment to the date of settlement. If Aviva considers that it's required by HMRC to deduct income tax from any interest due to Mr C, it should tell him how much it's taken off and give him documentation to use with HMRC.

I have considered the matter of the upset and inconvenience Aviva's error has caused Mr C. The error in this case has clearly caused Mr C inconvenience, firstly in having to question the situation and then in relation to his interactions with HMRC. In addition, thinking that he would have to find several thousands of pounds for the tax liability will have been a worry. I am currently minded to require Aviva to pay Mr C £350 compensation.'

Mr C said that he considered the outcome sounded fair to him. He also confirmed that he had submitted his online self-assessment form, but there was the option to amend it, and he had not paid the balance owing.

Aviva did not respond to my provisional decision, despite being reminded of the deadline for response. I am, however, satisfied that it received the provisional decision, as it was sent to the correct email addresses.

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 have reviewed the file again in its entirety and I have revisited my provisional decision. Having done so, and in the absence of any new evidence, my conclusions remain the same.

Putting things right

Aviva should issue a letter to Mr C confirming that it was incorrect when it issued the chargeable gain certificate, which Mr C can use with HMRC.

As Mr C has already submitted his tax return, he should attempt to change it to remove the chargeable gain once Aviva provides him with the above letter. If this is not possible via the online portal, Mr C may need to write to HMRC explaining the situation and enclosing a copy of my final decision and the above letter from Aviva. HMRC will then consider whether the circumstances are such that it would be appropriate to change the return and remove the chargeable gain. If HMRC agrees to change the return, that will resolve the matter of Mr C having a financial loss due to Aviva's mistake.

If HMRC decides that it will not allow the change to the tax return, Mr C will need to provide a copy of that refusal to Aviva and his SA302, setting out the calculation of his tax. Aviva should then pay Mr C the amount of tax he has had to pay due to having to declare the chargeable gain.

Aviva should also pay Mr C £350 compensation for the worry this matter has caused him.

My final decision

My final decision is that I uphold this complaint. In full and final settlement, I require Aviva Life & Pensions UK Limited to settle the complaint as detailed above in 'putting things right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 11 November 2025.

Derry Baxter
Ombudsman