

## **The complaint**

Mr M is unhappy that Aviva Life & Pensions UK Limited mis-sold him an income protection policy in 1996 ('the 1996 policy').

All reference to Aviva includes the company which originally sold the policy to Mr M.

## **What happened**

At the time the policy was sold to Mr M in 1996, he also had the benefit of another income protection policy – also sold to him by Aviva - in 1993 ('the 1993 policy'). Mr M's complaint had included concerns that the 1993 policy was also mis-sold to him but he has since confirmed to the Financial Ombudsman Service that this doesn't form part of the complaint he'd like determined.

Subject to the terms and conditions of the 1993 and 1996 policies, the benefit payable under both policies was £1,000 (so a maximum of £2,000).

Mr M made a claim in 2023 as he was too ill to work. Aviva paid a benefit of around £400, rather than £2,000 based on Mr M's income at the time. Mr M says the 1996 policy was mis-sold. Our investigator looked into what happened and didn't uphold Mr M's complaint. He raised further points in reply which our investigator considered but these didn't change her mind. So, this complaint has been passed to me to consider everything afresh to decide.

## **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.

That includes all the points made by Mr M (along with all other evidence). However, I won't respond to each of these. I hope Mr M understands that no discourtesy is intended by this.

Instead, I've focussed on what I think are the key issues here. The rules that govern the Financial Ombudsman Service allow me to do this as we are an informal dispute resolution service. If there's something I've not mentioned, it isn't because I've overlooked it. I haven't. I'm satisfied I don't need to comment on every point to fulfil my statutory remit.

So that everyone is clear, I've only considered the sale of the 1996 policy. And where there's incomplete and contradictory evidence, I've considered what most likely happened on the balance of probabilities. I know Mr M will be very disappointed as he feels very strongly that the 1996 policy was mis-sold. However, for the reasons I've set out below, I don't uphold his complaint.

- I'm not persuaded that the 1996 policy was mis-sold. I've considered whether Aviva acted fairly and reasonably when advising Mr M to take out the policy and I think that it did.
- I'm satisfied that the benefit under the 1996 policy (£1,000) was suitable based on

the needs identified and recorded in the fact find. And the other features of the policy like its cost, waiting period and term duration.

- When making this finding, I'm satisfied that the policy terms reflect that the benefit payable shall be limited so that the total annual rate of the benefit payable under the policy (and any other insurance policies providing an income during incapacity) shall not exceed 50% of the insured's earnings for the 12 calendar months immediately before disablement.
- The fact find completed in 1996 reflects that Mr M had an annual salary of £75,000. So, based on that salary, the benefit of £1,000 (even combined with the benefit of £1,000 under the 1993 policy) was within the maximum benefit payable.
- Mr M has said that the salary section (and other sections) of the fact find wasn't completed in front of him and the information is incorrect. That is, of course, possible. However, on the balance of probabilities, I'm not persuaded by what Mr M says.
- I appreciate that a salary of £75,000 is a lot higher than the salary noted for Mr M around three years before when applying for the 1993 policy. Mr M also says he'd never earned a salary as high as this. He has provided documentation from his accountant which says for the tax year ending 5 April 1996, Mr M paid almost £6,000 in tax. Mr M says that this amount of tax is consistent with a salary of around £31,000. However, I don't know how the sum of around £6,000 in tax was calculated. The fact find is also dated from the end of 1996. So, I'm not persuaded that the information provided from Mr M's accountant is compelling evidence that his earnings were significantly less than the £75,000 noted at the end of 1996.
- Further, and in any event, Mr M signed the application form at the time. I don't think it's plausible that he would've signed a form which contained incomplete important information. I'm satisfied, on the balance of probabilities, that the information had been on the form and would've been seen by Mr M when signing.
- The fact find also reflects that Mr M "is a high earner in the financial services sector" and he wanted to increase income protection cover as the benefit under the 1993 policy (£1,000) "is now inadequate in relation to his present earnings". I've taken into account Mr M's comments about the advisor's potential motivations by saying this. However, I'm satisfied that the advisor reasonably took the information given about income at face value and there was no need for them to request evidence of income when advising on the policy.
- I've gone on to consider whether Aviva made Mr M aware of the significant policy terms when selling the 1996 policy to him.
- From what I've seen from the documents around the time of the sale, I'm satisfied that Mr M was made aware of features such as the monthly benefit of the policy, the monthly cost, the waiting period before a claim could be made and the date the policy was due to expire.
- Under the further information section of the fact find, the advisor says that "the existing provision coupled with this current application are well within the parameters of the maximum allowable benefits". The advisor goes on to write that Mr L "understands that his gross income must remain at £48,000 or more per annum in order to recover £2,000 benefit on making a claim". And that "key features supplied and discussed". Mr M hasn't signed and dated this page of the document, only the advisor has. But the information written is very detailed and is dated around the same time as the section of the form signed by Mr M. It's possible that Mr M wasn't told this information at the time, as he says. However, on the balance of probabilities, I'm satisfied that he was and that's why it's reflected on the document. I think that's more likely than Mr M not being given this information and the advisor recording false

information. It's possible that Mr M may not recall this being said, which isn't surprising considering how long ago the 1996 policy was sold.

- Further, the maximum amount of benefit payable is set out in the policy terms. I've seen a letter addressed to Mr M dated November 1996 confirming the start date of the policy and reflecting that the policy terms were enclosed. I've taken into account what Mr M says about not receiving the policy terms. However, on the balance of probabilities, if he'd not received the terms, I think it's more likely than not that he would've requested them. There's no documentary evidence that he did at the time.
- I know Mr M did request a copy of the policy terms in 2010 (around 14 years after the 1996 policy was sold). However, I don't think that's persuasive evidence that they weren't issued at the time; they could've simply been misplaced or lost by then.
- I've also taken into account the particulars of policy statement sent to Mr M in 2010 and the information it contains. However, I've placed more weight on the documents from the point of sale as I think they're more relevant to whether the policy was mis-sold.
- I also note that the monthly benefit is detailed as being £1,000 on the illustration document from the time. However, it also says this would be payable subject to the conditions of the policy – which would've included the term relating to the maximum benefit payable. So, I don't think that's misleading or contradicts information in the fact find.
- I've taken into account that the fact find reflects that "client understands the need for regular reviews to ensure adequate cover maintained". However, I don't think Aviva was under any obligation to proactively review Mr M's needs after 1996. If Mr M's circumstances changed or he wanted the 1996 policy reviewed, I'm satisfied that he could've contacted Aviva. In any event, I don't think that's relevant to whether the 1996 policy was mis-sold based on Mr M's circumstances at the time.
- I understand that the 1996 policy is still active. As Aviva has said, if Mr M no longer wants the policy, he's free to cancel it in line with the policy terms.

### **My final decision**

I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 December 2025.

David Curtis-Johnson  
**Ombudsman**