

The complaint

Mr and Mrs T acting as trustees of a trust (The Trust) complain that Aviva Life & Pensions UK Limited (Aviva) both mis-sold them and unfairly administered a reviewable whole of life (RWOL) policy.

What happened

In 1988 Mr and Mrs T took out a RWOL policy with Aviva placing it in trust for the benefit of their two children. This policy provided a sum assured of £100,000 for a monthly premium of £18.84. The policy also came with indexation, meaning that the premium and sum assured could increase with inflation, until that lapsed in 2018.

Following a review in 1998, Aviva informed Mr and Mrs T that they would need to increase their premium to £19.02 to sustain the sum assured, which they did. The following two reviews in 2003 and 2008 both failed, with Aviva again explaining the premium would need to increase. In response to the 2003 review, Mr and Mrs T agreed to the higher premium of £53.73 but didn't agree to the proposed increase to £113.09 in 2008. As the policy passed its next two reviews in 2013 and 2018, Aviva didn't suggest any changes. Over the following years due to indexation the premium increased from £53.73 to £118.18.

In 2023, Aviva explained the premium would now need to increase to £147.45 to maintain a sum assured of £167,511, which had increased through indexation, which Mr and Mrs T accepted.

Around this time Mr and Mrs T became dissatisfied about a number of matters involving their policy and complained to Aviva. In summary they said:

- They felt this policy had been mis-sold to them.
- The unexpected premium increases over time now meant the policy was unlikely to provide the cover they thought it would.
- Aviva hadn't been transparent about the policy costs or the reviewable nature of it.
- They had been told in the sale the benefits were secured for the initial premium.
- Mr T became seriously ill in 2002 and having asked about the waiver of premium benefit their documents showed, were told they didn't have this cover.
- There has been around 12 administrative issues with their policy over the years.

Aviva considered their complaint but didn't agree it should be upheld. It said it wasn't responsible for the sale as another firm had sold it, and that it had fairly reviewed their policy. It also explained it had no records of Mr and Mrs T paying for the waiver of premium cover, concluding that benefit had either been cancelled or was included on the documentation in error. Aviva later appeared to have paid Mr and Mrs T £200 compensation relating to this complaint, although the reasons why haven't been made clear to me.

As Mr and Mrs T remained unhappy with Aviva's response to their complaint, they asked our service to look into what happened further. One of our Investigators looked into the matter but didn't agree it should be upheld. She explained, in summary, this was because:

- Aviva didn't sell the policy and so couldn't consider that further.
- The policy terms set out the reviewable nature of the policy and the frequency those reviews would be carried out.
- While reviews had taken place, they failed to meet the required standards.
- This meant that from around 2018 Aviva ought to have known significant changes to this policy would be required but hadn't fairly communicate that to Mr and Mrs T.
- However even if clear information had been provided, she wasn't persuaded Mr and Mrs T would've done anything differently, as alternative policies likely wouldn't have been cheaper and they still had a need for the family protection they took it out for.
- There wasn't enough evidence to say the waiver of premium benefit was included with the policy at the time.

Mr and Mrs T didn't agree with the outcome our Investigator reached. They explained they understood the waiver of premium charge was included in the overall premium cost. And that if they knew the policy could change like it did, they would've made different decisions about moving home and the level of mortgage taken with that. Aviva replied only to restate the sale was carried out by another firm.

As an agreement wasn't reached, this complaint was passed to me to decide. I reached the same overall outcome as our Investigator did but reached some different conclusions on the impact of the wider administrative issues in this complaint. I issued a provisional decision to explain my conclusions to both parties. In that I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Sale of the policy

Firstly, this policy was sold many years ago in 1988 and so there is limited information available about how, and by who, it was sold. From the evidence that is available I think it's more likely a firm other than Aviva sold it. I say this because it's internal notes show the sales channel to be "IFA" and there being an initial and renewal commission being paid. To whom is unclear, but overall, I think it's likely that indicates the policy was sold by another firm, rather than Aviva. Aviva then isn't responsible for how this policy was sold to Mr and Mrs T.

It follows I intend to say that I can't consider Mr and Mrs T's concerns about how this policy was sold to them against Aviva, nor unfortunately is there enough information to direct them to who did.

Policy reviews

As Aviva was the policy provider, it would be responsible for how it administered the policy. This includes the information disclosed about how it worked, the reviewable nature of it, and whether it applied the outcomes of those reviews fairly.

RWOL policies, like the one Mr and Mrs T took out and placed in trust, typically work by using the premium to pay for life cover with the excess, if any, being paid into an investment fund. Over time as the cost of the life cover increases, which it does with age, less of the premium is invested and more spent to maintain the life cover. The aim of this arrangement is that over time the investment element grows sufficiently to offset the higher costs of life cover in the future. The policy is then reviewed at regular intervals to evaluate whether the value of the investment fund, future premiums to be paid and the anticipated future cost of life cover would allow the policy to continue on the current terms. If that assessment is that it can't, then the review would "fail", with options being set out to sustain the policy for longer. Those typically being an increase in the premium paid, the sum assured being reduced, surrendering the policy, or taking no action and letting the policy lapse once it can no longer sustain itself.

Aviva has provided what it says is a copy of the policy terms in use at the time. This document appears to be dated 1991 and so not the version in place when Mr and Mrs T took out their policy. However due to the passage of time since it was taken out, I don't find it unreasonable that the version in use at the time is no longer available. Given that their policy was administered in a similar way to how this document directs however, I think it is at the least likely indicative of the terms Mr and Mrs T's policy operated under. Having read this document I'm satisfied it's likely on balance Aviva has told Mr and Mrs T that their policy was reviewable. I say this because section five of this document explains the policy would be reviewed on the tenth year of the policy and until the age of 70, be reviewed every five years after that tenth year. It explains at each of those reviews the firm will review the policy in the manner I've described above. And if it can't sustain itself on the current terms then it would either look to reduce the sum assured to an amount the premium can sustain or increase the premium.

But to apply that fairly, Aviva would've needed to present that information to Mr and Mrs T, including sufficient warning around the potential changes the policy could need in the future, in a clear, fair and not misleading way. I say this because in meeting the regulator's requirements around this, firms needed to ensure that they provide policyholders with sufficient information for them to be able to make an informed decision about what changes to make on their policy, and how this might affect it in the future.

Aviva has provided the cost of providing life cover to Mr and Mrs T since the policy was taken out. This shows the first tipping point I can consider, when the cost of life cover became more expensive than the premium they were paying, was around 2002. At this time the cost of life cover was £372.59 against the premiums paid that year of £290.52. This was an important moment in the policy as this is when the difference between the premium and costs of life cover would be paid from the investment element of the policy. This would be important information to Mr and Mrs T when making an informed decision about what to do with their policy.

In my view then Aviva ought to have set out clearly to Mr and Mrs T that their policy would likely need significant changes in the future to sustain it long term. Aviva communicated this to some extent to Mr and Mrs T when their policy was reviewed, which resulted in the following:

- 1998 – the review failed – agreed to a premium increase to £19.02.
- 2003 – the review failed – agreed to a premium increase to £53.73

- 2008 – the review failed – reduction in the sum assured.
- 2013 – the review passed – no changes suggested.
- 2018 – the review passed – no changes suggested.
- 2023 – the review failed – agree to a premium increase to £147.55

I've seen copies of the review letters sent to Mr and Mrs T and having read them, I don't think Aviva provided Mr and Mrs T with all the information it ought to have. I say this because while it provided useful information about the changes it was suggesting, I've not seen it explained what the costs of the life cover were, or, until the 2023 review, the value of the investment pot, and how changes made to those would affect the policy in the long term. Such information would be key for them to fully understand why the policy terms had to change, and to what extent future changes might be needed.

However, in my view even if Mr and Mrs T had all that information I don't think it's likely they would've done anything other than keep the policy and increase the premium to maintain the sum assured as much as they could afford to at the time.

I say this because while the policy more recently has had a relatively healthy surrender value of around £4,000, as it was on 10 March 2022 and 2023, that has largely arisen from Aviva recently reconstructing the policy following mistakes it says it made in its historic management of the policy.

Prior to then, the evidence shows the investment part had very little value left when the tipping point was reached, around £182. The situation had worsened by the next review in 2008, with the surrender value now £0. That improved afterwards, seemingly due to Aviva's additions to the policy when reconstructing it, with the following reviews passing until 2023. Encashing the policy then in my view wasn't likely a realistic option as it would've ended the cover for little cash value. I think it's likely their initial need for the policy, which was for family protection, hadn't changed and the policy would then still be attractive and useful to them on the terms offered where it could still offer a high sum assured at an affordable premium. I also note they had a tendency to accept the premium increases which further suggests they continued to have need for the policy, and while they may've been unhappy with it increasing still saw use in having it.

I've also considered whether alternative cover would be a reasonable possibility. But given the low investment value, there would've been an insufficient sum to make cancelling the policy and using those proceeds to fund a different policy realistic. It would in any event be unlikely that alternative comparative cover elsewhere would be available for a lower price than they were already paying, as other types of whole-of-life tend to be more expensive, and having a policy that could provide cover for life appears to have been more important to Mr and Mrs T than one that had a fixed term.

It follows then while I understand why Mr and Mrs T have become unhappy with their policy, I can't fairly say had they been given clearer information that they would've made a different choice in how to continue with the trust's policy.

Waiver of premium benefit

Mr and Mrs T say when they took the policy out they opted for the additional waiver of premium benefit, which Aviva wouldn't accept when Mr T became seriously ill in 2003. They've provided a copy of the original policy schedule which matches the policy number the review letters for their policy reference, I'm satisfied then this document is for the policy they've complained about.

I can see this does set out at the bottom that, "provision five of section two waiver of premium benefit applies to this policy in respect of [Mr T]", suggesting such a benefit was in place. But I need to also consider this document relates to the policy as it was in 1988 and it wasn't until around 2003 when Mr and Mrs T felt they could've used this benefit, which they recall speaking with Aviva about and weren't given the option in those calls of doing. Given this happened over 20 years ago there's little evidence or information available. Apart from the policy schedule no other information has been provided that waiver of premium was in place in 2003. I think it's important when weighing up the evidence that is and isn't available that Aviva hasn't been able to find evidence of payment for that benefit being made, especially where it has provided other historic information about their policy costs. I also take the view this benefit typically comes as an additional premium and so on balance I don't find the argument it was built into Mr and Mrs T's premium persuasive. I think it's more likely if the benefit was in place at policy inception then it was either cancelled or had otherwise lapsed by 2003, and so was no longer part of their policy.

It follows then while I think it's likely waiver of premium was taken out at inception, I've not seen persuasive evidence around 2003 that demonstrates this was in effect. My intention then is to say I don't uphold this part of their complaint.

Other administrative issues

Mr and Mrs T have provided evidence showing Aviva have during the life of this policy made a number of errors. This has included errors in the review calculations, reviews not being carried out correctly, indexation not being applied properly, and causing the policy to become "qualifying" for tax purposes when it shouldn't have.

Fortunately, Aviva has corrected these issues as evidenced by letters I've seen and the additional payments it made into the policy since. As it has already rectified those matters I don't intend to direct it do anything more around those.

However, these issues have differed and gone on for many years which would've added to Mr and Mrs T's inconvenience as trustees. Given the variation and length of time those matters have fallen across, I think that inconvenience would've had a higher impact on Mr and Mrs T compared to if it had been a one-off issue about a single matter. To reflect the increased inconvenience this would've caused Mr and Mrs T in their role as trustees, I intend to direct Aviva Life & Pensions UK Limited to pay £350 to the trust to compensate for the trouble caused by those incidents.

It's unclear but it appears Aviva has already paid, or attempted to pay, £200 already for those failings. If that is the case then the £350 I intend to award to the trust is inclusive of anything already paid in this matter."

Aviva responded to agree with my conclusions and intended award. Mr and Mrs T on behalf of the trust told me they didn't.

They explained this was because:

- They were told it was a joint whole of life cover with waiver of premium built into it, not that the policy was reviewable.
- That Norwich Union, now Aviva, sold the policy.
- They didn't recall ever receiving updated policy information or being sent anything to say the waiver had been removed.
- They had been told the policy had no surrender value as that wasn't a feature of their policy.
- I had made incorrect assumptions about the decisions Mr and Mrs T would've made about their policy.

As both parties responded to my provisional decision, the complaint was passed back to me 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.

In doing so I've carefully read again all the information and evidence about this complaint, including Mr and Mrs T's response to my provisional decision. But having done so I've not seen to reach a different conclusion to what I said in that decision.

Ultimately because this policy was sold over 35 years ago there is little information about how it was sold, who by and around some of the events that happened since. I have to then consider then when there is an absence of evidence what most likely happened based on the information that is available. Given the passage of time that has passed since the sale and events since, I can't make an inference against the firm for the absence of evidence that would fill these gaps. It simply isn't unreasonable Aviva hasn't been able to provide evidence that would've been useful that isn't now available because of the amount of time that's passed since.

I've already explained in my provisional decision why I couldn't conclude that Aviva are responsible for the sale of this policy. While Mr and Mrs T recall it being Norwich Union, which later became Aviva, and provided letters from Norwich Union about their policy, none of these are about the sale. The letters provided in my view are the sort of communications I would expect to see from the policy provider and not the seller. That balanced with other records suggesting this was a "IFA" sale and records of commission being paid to another unknown party, more likely in my view demonstrates the sale was carried out by another firm. I can't reasonably find Aviva responsible for the actions of another firm it has no liability for the actions of. It follows then I can't then consider the initial sale or what Mr and Mrs T were told in the course of that, against Aviva. That isn't to say I don't believe their recollection of events, it's simply that I need to decide on balance what most likely happened. And in my view the evidence on balance doesn't persuade me Aviva sold it to them.

In a similar manner around the waiver of premium, I again with the lack of evidence available, have to conclude what I think most likely happened. As I said in my provisional decision given it is on the policy schedule from 1988, it's likely it was taken out at the time. But 15 years had passed between then and when they wanted to use it. Aviva have no archived records of any premiums being paid for that, and it wouldn't usually be bundled in with the overall premium. As neither party can show the additional premium was paid when Mr and Mrs T thought to use it, I can't fairly conclude the benefit was still in place at that time. Again, it may be the events differed but I can only consider the evidence before me and as I've mentioned due to the passage of time there's little available. I understand Mr and Mrs T don't recall being sent any cancellation notices, or similar, but given the passage of time the absence of such evidence now doesn't in my view mean it can't be likely the benefit was cancelled or lapsed.

I understand Mr and Mrs T understood the policy to be different to how I've described it. The high initial sum assured, and low initial premium are however hallmarks of these policies, providing a high amount of cover and a low price aiming to offset the future costs to some extent from the underlying investment performance. That along with it being managed in line with a reviewable policy on terms similar to those in the policy document provided leads me to think it more likely the policy was reviewable than as Mr and Mrs T have described it.

Mr and Mrs T dispute what they call the assumptions I've made about decisions they would've taken had clearer information being given once the policy reached its tipping point. I've thought about this again but haven't changed my view. It can't be known what Mr and Mrs T would've done at the time had they been given clear information. I have to determine then what I think they would've most likely done on the balance of probabilities.

Relevant considerations when doing so include what they actually did and what their need for the policy was. As I set out in my provisional decision the policy failed a review four times, in three of those they accepted the higher premium and in one reduced the sum assured. This policy was taken out to provide financial protection for their family and so on balance a sufficiently high sum assured would've likely been more important to them than reducing the premium, which was also the most recent decision they made. At most times Mr and Mrs T were asked to make a decision the policy had little to no surrender value. As the cost of an alternative policy would likely be similar, given how the cost of cover increases with age, they wouldn't then have enough cash value from their existing policy to reduce the impact of the costs of a new policy. And cancelling the policy outright would mean they no longer had the financial protection for their family they took this policy out for, which they likely still had a need for. I appreciate none of the options available to them were likely "good" options but those are what would've been available to them. And as the need for the policy remained and they tended to accept the premium increases, I think it's likely they would've made the same decisions they did.

I appreciate deciding a matter on such probability can come across as making assumptions. But that isn't the case, I need to determine what the evidence persuades me mostly likely would've happened. And here for the reasons explained above, that led me to conclude Mr and Mrs T would've maintained the policy taking the same decisions they did when the policy was reviewed. As I'm not persuaded they wouldn't have done anything differently with clearer information, I can't fairly direct Aviva to compensate them for this part of this complaint.

I do sympathise with the position Mr and Mrs T have found themselves in and the impact the changes to this policy, and the wider matters, have had on them. But I have to be fair to both parties when reaching my decision. And for the reasons given above, I've not seen to uphold their complaint outside of the administrative matters I set out in my provisional decision.

Putting things right

For the reasons explained in my provisional decision I remain of the view £350 fairly compensates Mr and Mrs T for the administrative issues during the life of their policy. I've not seen to depart or add to my conclusions around that.

My final decision

I uphold this complaint in part and direct Aviva Life & Pensions UK Limited to pay £350 to the Trust, less anything it has already paid them in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs T to accept or reject my decision before 19 January 2026.

Ken Roberts
Ombudsman