

## The complaint

Mr M and Mr T as trustees of the T Trust complain about the outcome of a review carried out in 2024 of its Reviewable Whole of Life (RWOL) policy. Mr T has represented the T Trust throughout this complaint so I will refer only to him within this decision.

## What happened

Mr T took out a joint RWOL policy which commenced in October 1992 on a standard basis. The sum assured was £110,000 with an annual premium of £820.82. I understand Mr T received advice from a third party independent financial adviser (IFA) Firm K to take out this policy. Aviva are responsible for the administration of this policy and so I will refer to them throughout this decision even where, historically, communication was sent by a different firm.

I've been provided with a copy of the policy document, at part D point 13 'Reduction of the guaranteed Minimum Benefit' it sets out that at the 10-year anniversary Aviva will reduce the sum assured to 75% of the premiums payable from the date of assurance to the anniversary date on or next succeeding the younger life assured's 75<sup>th</sup> birthday if at anytime:

- The bid value of the policy isn't sufficient to meet the cost of providing life cover and the administration fee, or
- The reduced benefit exceeds either of the bid value and the amount a new policy for the same premium could be effected.

Mr T received the first review in 2002, the policy passed this review, the annual premium was stated as being £1,158.92 and sum assured £134,808.10. The letter from Aviva explained that the level of cover could currently be maintained and they didn't intend on reviewing the policy for another 10 years.

Mr T wrote to his IFA in October 2002 to ask if Aviva could change the level of cover, as his understanding was that payment would be the greater of the bid value or the guaranteed minimum benefit. Mr T's IFA responded, they said that it might be that the same amount of cover would apply but the premiums needed to maintain the cover could be substantially more. But, if Mr T only wanted to pay the current level of premium then cover may be reduced.

I've been provided with some policy reviews:

- August 2020, the policy passed its review. The letter sent to Mr T explained that the current level of premium may sustain the policy for four years. However it suggested Mr T seek advice about taking action, the following options were provided to him:
  - o Increase the premium to £5,398 and the premiums may sustain the sum assured for 10 years on a maximum basis.
  - o Increase the premiums to £8,587.83 and the premiums may sustain the sum assured for life on a standard basis.
  - o Reduce the sum assured to that which may be maintained on a maximum basis for 10 years.

- Reduce the sum assured to that which may be maintained on a standard basis for life.
- In August 2022 the policy passed its review. The letter sent to Mr T explained that the sum assured may be sustained for two years. The options provided to him were in line with the options set out above with the premium options as:
  - Increase the premium to £12,389.21 and the premiums may sustain the sum assured for 10 years on a maximum basis.
  - Increase the premiums to £8,587.83 and the premiums may sustain the sum assured for life on a standard basis.
- August 2023, the policy passed its review. The letter sent to Mr T explained that the sum assured may be sustained for two years. The options provided to him were in line with the options given in 2020 with the premium options as:
  - Increase the premium to £14,444.06 and the premiums may sustain the sum assured for 10 years on a maximum basis.
  - Increase the premiums to £16,361.11 and the premiums may sustain the sum assured for life on a standard basis.

In August 2024 the policy failed its review, Mr T was given the following options:

- Increase the premium to £17,138.13 and the premiums may sustain the sum assured for 10 years on a maximum basis.
- Increase the premiums to £18,285.28 and the premiums may sustain the sum assured for life on a standard basis.
- Reduce the sum assured to that which may be maintained on a maximum basis for 10 years.
- Reduce the sum assured to that which may be maintained on a standard basis for life.

Mr T was unhappy with the outcome of the review and referred a complaint to Aviva, he said that neither of the options given to him were acceptable. He said he expects the premium and sum assured to remain the same. As Mr T continued to make the same premium payments the sum assured was reduced to £21,324.

Aviva provided their final response to Mr T on 20 September 2024, they didn't uphold his complaint. They explained that the review carried out was in line with the terms and conditions of the policy Mr T has.

Unhappy with the response Mr T referred his complaint to this service. An Investigator provided their assessment they upheld Mr T's complaint. In summary the Investigator said that Aviva didn't provide Mr T with enough information for him to make informed decisions about the policy. And if they had done so within 12 months of the policy's tipping point Mr T would have increased his premiums to £4,000 to mitigate the long term implications of his sum assured being reduced dramatically. As such the Investigator suggested Aviva reconstruct Mr T's policy so that going forward Mr T pays an annual premium of £4,000 for a sum assured of £139,148.01.

Aviva didn't agree with the assessment, they provided the 2012 annual review which the policy had passed. This review explained that the sum assured should be maintained for life if the annual premium was increased to £4,750.65. They said that Mr T had not taken up this option that was provided to him, and he hadn't increased the premiums at the 2020, 2022 or 2023 reviews either. Mr T responded, he said that he had discussed the review letters with his IFA and it was decided that it was best for Mr T not to make changes to the policy, instead to wait to see how the policy performed.

A second view was issued, which did not uphold Mr T's complaint. In summary the Investigator said that Aviva did let Mr T know the long term sustainability of the policy in 2012 and 2020. As Mr T didn't choose to take the options available to him at the time he couldn't conclude that Mr T would have paid an increased premium had it been offered, and so the Investigator wasn't asking Aviva to take any action.

Mr T wasn't happy with the assessment and asked for the complaint to be reviewed by an Ombudsman. In summary he asked the following:

- If the cost of life cover was around £4,000 and there were funds to cover the shortfall from the £1,244.74 premium that was paid, why did the policy review fail in 2024?
- Can he have an explanation about the £17,138.13 life cover cost as set out in the 2024 review. Mr T had calculated that the cost of life cover for the year would be around £4,000.
- The policy has always been funded, why was it necessary to increase the premiums between 2012 and 2020? An increase in premium now should be a fair one.
- Had Mr T been paying the increased premium from 2012 he would have paid more than he needed to, to date.
- Why he was not told that the policy had reached its tipping point in 2015, and why at the time he was not given an option to increase the premiums to cover the increasing costs of life cover.
- He discussed the 2012 review with his IFA, more than enough was in the investment pot – which is why he didn't take up Aviva's offer to increase the premiums. He said that his IFA wrote to Aviva to set out that Mr T had no intention of increasing his premiums to £4,750.65.
- The initial view reached by the Investigator was a fair one, Mr T understands the need for an increase of premium – a revised premium of £4,000 for a sum assured of £139,148.10 would be fair.

I issued my provisional decision I didn't uphold Mr T's complaint. Aviva didn't provide any further information. Mr T provided the following comments, in summary:

- Can Aviva ask for more than the real cost of life cover?
- The difference between the premiums paid and the cost of the life cover is put into the investment pot.
- Do Aviva ask for additional premium to cover shortfalls in poor investment performance?
- Can Mr T just pay the actual cost of the life cover going forward?
- Had Mr T known how this policy worked in 2015 he would have sought clarification and raised a complaint then.

### **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 considered Mr T's response to my provisional decision, which I thank him for. I appreciate this will come as a disappointment to Mr T but, having done so I'm not upholding this complaint, I will go on to explain why below. Much of my reasoning is the same as set out within my provisional decision.

Before I set everything out in full, I wanted to address some of the points Mr T raised following my provisional decision:

- Can Aviva ask for more than the real cost of life cover?

Aviva's calculation considers the cost of life cover based on mortality rates and life expectancy along with some other considerations. They set the premium based on the actuarial calculations. In the early years it's likely the premiums are more than the real cost of life cover. As Mr T's policy is in the later years, I understand the premiums being collected now are not more than the real cost of life cover.

- The difference between the cost of the life assurance and the premium paid is put into the investment pot.

Mr T's premiums are not covering the cost of the life assurance; the costs are being supplemented with the funds held within the investment pot. So, there is no surplus.

- Do Aviva use the money they ask for over the actual cost of life cover to meet shortfalls in poor investment returns?

There has been a lot of change in the investment space since Mr T took out this policy with Aviva in 1992. Part of the calculation Aviva carry out predicts how investments will perform in the future. If an investment doesn't perform as well as had been predicted, then the amount of money in Mr T's 'investment pot' might not be as high as those initial predictions. So, investment performance could have an impact on the premium calculations.

- Can Mr T pay the actual cost of the life assurance going forward. Aviva are asking for an amount which is four fold that of the actual cost in the review letters.

As set out above, and below in more detail when I'll explain how Mr T's policy works, Aviva's review letter provided a calculation based on the following 10 years, or for life. To provide Mr T with more context it cost Aviva £2,725.59 to provide £139,148.10 of cover for the year ending 2021. This had increased to £5,956.25 for the year ending 2022. As the lives assured age this cost will most likely continue to increase exponentially as it did between 2021 and 2022. I don't have the current cost of this level of life assurance from Aviva, but it would most likely be significantly more now than £5,956.25 per annum.

To smooth those increases Aviva will have calculated how much they think it will cost over the next 10 years (in the example Mr T has given) to provide £139,148.10 of cover. And average that across the years. This isn't a simple calculation as consideration is given to the amount in Mr T's investment pot, how those investments may perform, and the life expectancy of the lives assured along with other metrics.

Whilst I have considered everything that has been provided to this service, I don't intend on commenting on each item. Instead, I will focus on what I have determined are the key aspects of the complaint.

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. In reaching my conclusions, I've considered in particular:

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

The key complaint point Mr T has made about this policy is that he is unhappy that the premium would have needed to increase significantly in 2024 following the failed review.

I think it's helpful to explain how RWOL policies generally work in practice. The premiums paid cover the cost of life cover and any charges. Anything above that is invested to build up a fund. Mr T's policy was taken out on a regular basis. So, some of the premiums in the early years were invested, into what Mr T has referred to an 'investment pot'.

Generally, at the start, when the cost of life cover is lower, more of the premiums are invested. As time goes on the cost of the life cover increases as the policyholder gets older. Which means that it's likely there will come a time when the premiums paid no longer meet the costs of the life cover and charges on their own (the tipping point). The investment fund that has been built up is used to help pay the increasing cost of the life cover. However, there inevitably comes a point where the life cover costs exceed the premium and the investment fund is depleted. Unless the fund's growth outpaces the rise in the costs of the life cover.

Eventually the policy provider will conclude that the premiums being paid, and the fund value, are no longer able to support the level of cover. Therefore, to maintain the policy either the premiums being paid will need to increase, usually significantly, and are likely to continue to increase as the consumer gets older and the life cover cost continues to increase.

Mr T has said that the policy has been fully funded up to the 2024 review, so he doesn't understand why the review failed. I can understand why Mr T is asking this question based on his explanation of his understanding about how this policy works. However, Aviva are not just considering how the policy has been funded up to the review date – they are also considering how the policy will be funded for the remaining time it will be needed. And they do that by making several assumptions, for example, about the life expectancy of Mr T. This is also why the suggested premium Mr T mentions from the 2024 review of £17,138.13 (the sum Aviva said may allow the policy to maintain the sum assured for 10 years on a maximum basis) will be more than the actual cost of the life cover. Because, the cost of life cover will most likely increase year on year, and those increases are likely to be significant. And so, Aviva have considered how much the policy will likely cost over the full 10 years and spread the cost to Mr T over the 10 years to smooth any increases needed.

Mr T has asked why it would be necessary to have increased the premiums from 2012, as he would have paid more over the years than was needed to fund the policy to this point. I hope the above explanation about how this policy works has answered this question. The idea of increasing premiums early is to reduce the impact of the rising cost of life cover in later years. The earlier a premium is increased, the more chance that a policy remains sustainable for longer and therefore lower increases are needed.

The opportunity for consumers to make decisions about key changes to the policy is a key event in the life of the policy. The decision becomes more difficult to make the longer the consumer pays into the policy and the options available to mitigate poor outcomes start to diminish. Information about a RWOL policy should be provided to consumers in a clear, fair and not misleading way. With information about the changes later down the line to the policy the consumer might decide on a number of actions:

- To adjust the terms of the policy earlier in its life. As set out above, for example, by increasing premiums earlier, so more is paid over a longer time creating a smoothing

effect. So, premiums will be higher than they were at the start of the policy, but not as high as they might otherwise have been at the point of a failed review.

- A consumer may decide that a policy is not worth maintaining at an earlier point and elect to surrender it.
- Or a consumer may decide that its worth maintaining the policy on its existing terms right up until the point the policy fails a review.

In broad terms I consider it was incumbent on Aviva to have provided the following information in a clear fair and not misleading way to enable Mr T to make an informed decision:

- A clear outline of the existing cover – including the sum assured and premiums.
- The current surrender value.
- The life cover costs (including administration charge).
- A clear explanation that the costs were no longer being met by premiums.
- A clear explanation of how long the policy was likely to be sustainable on its existing terms (reasonable approximations would suffice).
- Estimates of what the policy might cost at the point when the policy was likely to cease to be sustainable on its existing terms to give information that would allow Mr T to fully appreciate the risks and consequences of not taking any action.
- A clear explanation of the poor outcomes a consumer might face at the point the policy became unsustainable on its existing terms. This should include a clear outline of the levels by which premiums would need to increase (or the sum assured would need to decrease) to maintain the policy at that point (reasonable approximations or illustrative examples would suffice).
- A clear explanation of the options available to a consumer that were aimed at mitigating that outcome, together with the costs and benefits of each option (including increases in premium levels, decreases in the sum assured or surrender of the policy).

I've been provided with the annual breakdown of total premiums paid and total cost of the life cover of Mr T's plan. The total cost of the plan in the year ending 2015 was £1,307.73 per annum, the premiums paid were £1,244.74. So, the policy had reached its tipping point. And so, I would have expected Aviva to provide Mr T with the above information about his policy by August 2016, within 12 months of the end of the 2015 policy year.

Mr T was provided with an annual review outcome in 2012 and then I've not seen any further correspondence provided to him until the review of 2020. So, I can't agree that Aviva provided Mr T with clear, fair and not misleading information within 12 months of his policy's tipping point at the end of the policy year 2015.

Mr T has asked why Aviva didn't tell him in 2015 that the policy had reached its tipping point, and why he wasn't provided with the opportunity to increase the premiums at that point. Whilst I can't provide Aviva's reasoning as to why this information wasn't sent to Mr T – I do agree with Mr T that it should have been provided to him. So, I need to go on to consider what Mr T would have done had Aviva given him the information above with the option of increasing his premium within 12 months of the tipping point, by August 2016.

## **What would Mr T have done differently?**

I've considered what, if anything, Mr T would have done differently if he'd been provided with all the information set out above.

Mr T has said that he took out the life cover to provide a lump sum on death which would fall outside of his estate in respect of inheritance tax. He's also said that he sought advice from his IFA following the reviews and it was decided that he would wait to see how the policy progressed, rather than select any of the options given to him to change the policy.

I've carefully considered what I think Mr T would likely have done in August 2016 had he been told by Aviva everything I have set out above. That information would have been to let Mr T know that increases would likely be needed to the policy premiums as he aged, and that those premium increases would likely be substantial. Had he been given clear information at the tipping point, the options open to him would have been:

- Cash in the policy at the cash in value.
- Reduce the benefits.
- Increase the premiums to maintain the level of the sum assured.
- Leave things as they are until an increase to the premiums was needed at the point of a failed review.

In response to my provisional decision Mr T has said that he would have asked Aviva to clarify why they'd offered to increase the premium to just under £5,000 when the real cost of the sum assured was around £1,300 per annum, had he been provided with clear information. And, had they been unsatisfied with the response from Aviva they would have brought a complaint to this service at that time. I accept this may have been what Mr T would have done at the time. The likely outcome of any complaint raised at that time would have been to explain to Mr T the way this policy operated, as a reviewable policy. As I have done within this decision. So, Mr T would then have needed to decide what he wanted do with his policy based on the options I have listed above.

Mr T has made it clear that at the time he wanted to maintain the level of the sum assured. And he still would want to try to maintain that level of sum assured now. In his correspondence with this service, he has said that he understands an increase in premium is needed – but he thinks that increase should be fair. So, I don't think he would have chosen to reduce the sum assured in 2016. And for the same reasoning I don't think he would have surrendered the policy either.

So, the only other option available to him, apart from awaiting a failed review, was to increase the premium. In 2012 Aviva set out within their review letter that Mr T could increase the premium to £4,750.65. The letter explained that Aviva thought this level of premium per annum should sustain the sum assured for life. Mr T has said that following a discussion with his IFA he decided not to increase the premium to this level. And, he didn't increase the annual premium when options were presented to him in 2020. So, I'm not persuaded that Mr T, had he been given the option to increase his premium in 2016, would have agreed to do so.

Based on the above I think it's most likely that had Mr T been provided with more information about his policy in August 2016, he would have done as he did do – continue with the same terms of the policy until such time when a review failed.

I appreciate Mr T feels the initial view reached by the Investigator was a fair one – the outcome of which was for Mr T to pay £4,000 for the sum assured as it was prior to the 2024 review of £139,148.10. However, this resolution would only be fair if I concluded that Mr T would have been paying £4,000 per annum from August 2016 to date. But, Mr T has been clear that he had no intention of increasing the premiums he was paying to Aviva following advice he received from his IFA. And so, he never would have agreed to pay £4,000 per annum in August 2016.

### **Summary**

Aviva should have provided Mr T with more information in August 2016. And, they should have provided him with this level of information at the other review dates also. However, had they done so, on balance, I don't think Mr T would have done anything differently than he did at the time. Which was to continue with the policy on the same terms until it failed its review. I appreciate this will come as a disappointment to Mr T but I'm not upholding his complaint.

### **My final decision**

I don't uphold the T Trust's complaint about Aviva Life & Pensions UK Limited.

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

Cassie Lauder  
**Ombudsman**