

The complaint

The trustees (Ms B and Mrs C) of the C Trust (the 'Trust') complain about changes Aviva Life & Pensions UK Limited (Aviva) made to the sum assured of a reviewable whole of life (RWOL) policy.

What happened

Mrs C is representing the C Trust and so I will refer to her throughout this decision. In late 1993 Mrs C says she, and the late Mr C, received advice from Birstall Insurance Services (Birstall) to take out a RWOL policy with Sun Life. The sum assured was £50,000 with a monthly premium of £15. Aviva are now responsible for the administration of the C Trust's policy and I therefore make reference to them going forward.

An application form was signed on 1 December 1993. I understand the policy commenced in March 1994. The Particulars of Policy set out:

"The death benefit is selected at commencement within certain limits and is guaranteed to apply for the first ten years."

On 15 March 2010 Aviva say they sent Mrs C an annual review which was marked as returned as undelivered. Mrs C has provided an annual bonus statement she received from Aviva which is dated 15 March 2010, Mrs C still resides at the address she gave Aviva when this policy commenced and where this bonus statement was sent to.

In February 2014 a review letter was sent to S D Independent of 1 Prospect House. And a cover letter was also sent to Birstall of 1 Prospect House. The review set out that Mrs C's policy had been reviewed on the tenth anniversary. I've not been provided with a review from the tenth anniversary. The letter went on to say as twenty years had passed since the policy's commencement Aviva were carrying out another review. The review said that the current level of cover would likely be supported for four years. Options were provided to increase the premiums paid to £70.29 which would support the level of cover for 10 years, or £174.02 for the life of the policy. Aviva went on to say they intended on reviewing the policy in 2 years. Further reviews were sent as follows:

- February 2016, to S D Independent, Aviva said the sum assured could be maintained for a further 5 years.
- February 2019, to Birstall (S D Independent), this set out the level of cover could be maintained for 2 years. This letter was returned to sender.
- February 2020, to S D Independent, this set out the level of cover could be maintained for 1 year.
- February 2021, to S D Independent, the level of cover was noted as £50,000. Avia set out options, increase the monthly premiums to £255.79 to sustain the level of cover for 10 years, to £344.70 for life or reduce the level of cover.

In April 2023 Mrs C wrote to Aviva to ask them for a copy of the policy documents. She says she didn't receive the documents, instead a statement was provided to her which showed

the sum assured had dropped significantly to £3,915. Mrs C raised a complaint, in summary she said she would not have taken out the policy had she known it was reviewable.

On 22 November 2023 Aviva sent their final response, in summary they said:

- An annual review was sent to Mrs C on 15 March 2010 but it was returned as undelivered. Mrs C was therefore marked as 'gone away'.
- Policy reviews were sent to Birstall in February 2014, February 2016, February 2019 and February 2021.
- The February 2016 review was returned as undelivered.
- As no response was received to any of the reviews the sum assured had to be reduced as the premiums no longer supported the level of cover.

Unhappy with the response Mrs C referred her complaint to this service. An Investigator provided their assessment, they didn't uphold the complaint. In summary they said that the receipt of clear and not misleading information would not have changed what Mrs C did – which was to maintain the original monthly payments.

Mrs C didn't agree with the assessment and asked for an Ombudsman to consider the complaint.

I provided my provisional decision, in summary I said I intended on upholding Mrs C's complaint. I suggested that Aviva pay Mrs C the surrender value of the policy as at March 2015 and refund all premiums she had paid since then. The payment was on condition of Mrs C providing evidence to Aviva that Mrs C A C had either provided their authority to surrender the policy or been removed as Trustee.

Mrs C agreed with the provisional findings, Aviva didn't provide any further comments for consideration.

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.

Having done so I'm upholding Mrs C's complaint, I will go on to explain why below.

Aviva have given this service consent to consider Mrs C's complaint, and so I have not considered whether or not this complaint was brought in time.

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 Mrs C has made about her policy is that she is unhappy with changes made to it as the sum assured has decreased. I'm not able to consider a complaint

made about the advice to take out this policy against Aviva – because they didn't provide the advice, Mrs C has said she received advice from Birstall.

The particulars of the policy set out that the sum assured is only guaranteed for the first ten years. I think it's helpful to explain firstly 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. At the start, when the cost of life cover is lower, more of the premiums are invested. Generally, 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. Or the sum assured is reduced by a significant amount. This is what has happened to Mrs C's policy.

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. 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.

I've been provided with the annual breakdown of total premiums paid and total cost of the life cover. The policy was self-sufficient (the annual premiums covered the cost of the life cover and charges) until 2014. During the policy year 2014 the total cost of the policy was £238.08 and total premiums paid were £180, leaving a shortfall. Which means that at some point during 2014 the policy reached its 'tipping point'. The point where the premiums needed to be topped up by the fund for the sum assured to be supported. I would expect Aviva to have provided Mrs C with the above information within 12 months of this point, in order for her to make an informed decision about what she wanted to do with the policy.

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 Mrs C 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 Mrs C 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).

On balance, I think Aviva made an administrative error which resulted in Mrs C receiving no correspondence from them at all following the tipping point of the policy. I say that because Aviva have said they marked Mrs C as 'gone away' following a review letter sent to her home address on 15 March 2010.

I don't think Aviva carried out a review in 2010. Because in their review letter of 2014 Aviva set out that the 2014 review was the next review following the first review at the ten year anniversary. Which was presumably in 1994, ten years from the commencement of the policy. Additionally, all reviews I have been provided with were dated as sent in February of the year the review took place. And Mrs C has provided this service with a copy of a letter she received from Aviva which is dated 15 March 2010. Based on the evidence I'm persuaded that the letter Aviva refer to as a review being returned to them was the letter Mrs C did receive in March 2010. And so, it's reasonable to conclude Mrs C was marked as gone away in error. Mrs C is still residing at the address she provided to Aviva at commencement of the policy and so, had Aviva not made this administrative error Mrs C would have continued to receive correspondence from them.

Based on the above, I can't agree that Aviva provided Mrs C with everything she needed to make an informed decision about the policy when it reached its tipping point in 2014. Because she didn't receive anything at all.

Aviva were sending review letters to S D Independent, this firm is not mentioned on any of the policy documents I have been provided with so it's not clear why. But, as set out above, had Aviva not made the error they did, they never would have been in the position of sending correspondence elsewhere and Mrs C would have received the reviews to her home address. And I have considered the contents of the review letters. Aviva didn't provide the current surrender value or option to surrender the policy, cost of the life cover or an explanation about the premiums no longer meeting the cost of the life cover. As such, even if Mrs C had been receiving the reviews, which I don't agree she did, they did not provide her with enough information to make an informed decision about what to do with the policy.

What would Mrs C have done differently?

I've considered what, if anything, Mrs C would have done differently if she'd been provided with clear and not misleading information about the policy. Had she been given clear information at the tipping point, the options open to her would have been:

- Cash in the policy at the cash in value.
- Increase the premiums to maintain the level of the sum assured.
- Reduce the sum assured.

When asked what she would have done, Mrs C reiterated that she was unaware the policy was reviewable, she was told that the premiums would never change. And, had she been made aware she would never have taken out the policy. She said she was unable to consider the options as they were never presented to her. When this service asked what she intends to do now she is aware this is a reviewable policy, Mrs C said she would like a refund of the premiums she has paid as the policy has not been fit for purpose.

Whilst Aviva are not responsible for what Mrs C was told at the commencement of the policy, had they provided clear and not misleading information at the policy's tipping point it would have highlighted to Mrs C that this was a reviewable policy. And that to maintain the cover changes would need to be made to the premium paid.

Based on Mrs C's testimony I'm persuaded that, had the reviewable nature of this policy been highlighted to her in 2014, she would have raised a complaint about the sale of the policy. It's not possible for me to say what the outcome of that complaint would have been – I can't comment on if this policy was suitable for Mrs C's circumstances when she took it out. However, though there would have been an option to increase the premium to a level that Aviva thought would sustain the policy for life – that still would have been subject to reviews and possible changes. There would be no outcome which meant that this policy continued on a fixed basis – which is how Mrs C has said she thought the policy would operate and what she wanted. It would have been explained to Mrs C clearly that this policy, should it remain in place, would be on a reviewable basis.

Mrs C has been very clear in her testimony that she would not have wanted a reviewable product. By 2014 sadly Mrs C's husband had passed away and she has explained an increase in premium would not have been affordable. To maintain the level of cover for the life of the policy the review of 2016 sets out that premiums would have needed to raise to around £174 from £15. So, I don't think Mrs C would have chosen to increase the premium to maintain the cover. I'm persuaded that Mrs C would have instead chosen to surrender the policy as it was not the cover she had thought she had.

I've considered whether or not Mrs C would have sought alternative cover. The cost of a comparable non-reviewable policy that wouldn't be subject to changes in the future would have cost significantly more than what Mrs C was paying for this policy. In the absence of any evidence to suggest that Mrs C would have wanted to pay much more than £15 for a policy, I don't think it's likely that she would have taken out a policy elsewhere.

The Trust

This policy is not legally owned by Mrs C as it is held in trust. I have been provided with a copy of the Deed, signed on 21 March 1994. Two additional trustees were appointed, Mr B and a Mrs C A C. I appreciate Mrs C has explained that she is not in touch with Mrs C A C. The Trust sets out the following:

“(iii) RECEIPT

The receipt by the trustee(s) of any monies payable under or deriving from any dealing with any policy shall be a full and sufficient discharge to the assurance company who shall not be concerned to see the application of any such monies.”

So, any surrender value would be payable to the Trustees for management of those funds and distribution as per the terms of the Trust.

I am therefore unable to award the surrender value of the policy to Mrs C directly. For Aviva to carry out the below redress Mrs C will need to either:

- Obtain authorisation from the remaining additional Trustee and provide a copy of that authorisation to Aviva. Or,
- Remove the additional Trustee. Mrs C may need to seek legal advice about how to do so – once the additional Trustee has been removed from the Trust Mrs C will need to provide evidence of this to Aviva.

Summary

Aviva are not responsible for the sale of this policy so I can't consider if it was suitable for Mrs C in 1994 when she took it out originally. The policy was never on a non-reviewable basis and so I can't ask Aviva to act as if it was.

Aviva made an administration error which meant that Mrs C didn't receive any correspondence from them from March 2010 until she got in touch with them in 2023. Mrs C's policy reached its tipping point in 2014 and so Aviva ought to have provided her with clear and not misleading information within 12 months of the end of the 2014 policy year in March, so she could decide whether to:

- Cash in the policy at the cash in value.
- Increase the premiums to maintain the level of the sum assured.
- Reduce the sum assured.

Had they done so in March 2015, I'm persuaded this policy would have been surrendered. As such I'm directing Aviva to pay redress as if the policy had been surrendered in March 2015.

If Mrs C accepts my decision, then it would mean that the policy would end. Therefore, she may wish to seek independent financial advice on the impact the outcome will have on her individual circumstances and needs.

Putting things right

My aim when awarding redress is to put Mrs C in as close to the position she would have been in had Aviva acted fairly. Had Aviva acted fairly, for the reasons set out above, in March 2015 the policy would have been surrendered. So, the surrender value would have been paid. And, Mrs C would not have continued to make the monthly premium payments she has done.

I therefore direct, on production of either authorisation from Mrs C A C or evidence that Mrs C A C has been removed as an additional Trustee, Aviva to pay the March 2015 surrender value, plus 8% per year simple interest from the 31 March 2015 until the date of Mrs C's acceptance of the final decision.

Aviva should also refund all premiums paid from April 2015 plus 8% simple interest from the date of each premium paid until the date of acceptance of the final decision.

Should Aviva take longer than 28 days to pay the above redress following receipt of the above-mentioned evidence from Mrs C:

- Aviva should add 8% per annum simple interest from 28 days after receipt of evidence from Mrs C of either authority from Mrs C A C or evidence of their removal as Trustee, until the date of settlement.

My final decision

Your text here

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs C as Trustees of the C Trust to accept or reject my decision before 6 February 2026.

Cassie Lauder
Ombudsman