DRN-6121723

Financial Ombudsman Service

The complaint

Mr W and Mrs W complain on behalf of the W Trust about the way Aviva Life & Pensions UK Limited has administered a whole of life policy. The further information received at the policy reviews indicating changes to the premium were needed, has led them to conclude the policy was designed to become unaffordable and fail.

What happened

In 1991, Mr and Mrs W were sold a reviewable whole of life policy by an independent financial advisor (IFA). The policy was provided by General Accident (now Aviva). Initially, the policy provided life cover of £130,000 for a monthly premium of £20, paying out on second death. The policy included indexation, which broadly meant the cover and premium would increase in line with inflation. The policy was put into trust with Mr and Mrs W amongst the trustees with other family members.

The policy continued and indexation increased the cover and premium annually. The first general review was after 10 years and then at regular intervals afterwards. The policy passed its first few reviews, and the only changes were the increases linked to the indexation. The policy was reviewed in 2011. The outcome of this review was changes were needed to maintain the cover. The option to increase premium was taken at this time.

In 2012, Mr W had reached the age when the indexation should have stopped, but this didn't happen. In 2016, Aviva realised its mistake and made a correction to the policy. The benefit level of the policy was reduced from £419,263 to £344,928, and the premium from £140 to £123.

The policy was reviewed again in 2016. The outcome of this review was that Aviva could no longer guarantee the current benefit level until the next review date (in 2017). Mr and Mrs W were given options to reduce the level of cover or increase the premium. There was also an option to do nothing, with a warning that this would lead to the policy lapsing before the next review. Mr and Mrs W took the option to increase the premium.

The policy was reviewed in 2017. The outcome of this review also indicated either an increase in premium or a reduction in the sum assured was needed. At this point Mr and Mrs W asked for the policy payments to be suspended until their concerns regarding high premium increases were investigated. As the premiums were not increased, the benefit was reduced to £193,386. In March 2018, Aviva provided an illustration to Mr and Mrs W that indicated to provide a benefit of £400,000 in 2032, the premium would have to increase to £954 per month. Following this, later in April 2018 Mr and Mrs W stopped paying the premiums, and the policy lapsed without value.

Since 2017, Mr W has been raising queries and corresponding with Aviva about this policy. He has received responses but remained unsatisfied with the information he was given. In October 2018, he wrote to Aviva to request answers to his questions about its involvement with the policy – including the design of the policy, the level of premium increases, and a refusal to indicate likely future increases when requested.

Aviva provided a number of responses to Mr W. It said it wasn't responsible for the sale of the policy as that would lie with the IFA who advised Mr and Mrs W originally. It set out the review process and provided further information about the historic reviews in an attempt to answer the queries raised. It also agreed to refund some premiums due to the failure to remove the indexation in 2012.

As they didn't receive a satisfactory response, Mr W referred the complaint to this service for an independent review.

One of our investigators looked into the complaint. In summary he said Aviva didn't do enough to give clear, fair and not misleading information about the policy in the regular reviews. Had Mr and Mrs W known at the time of the 2006 review that the policy premiums were going to rise so significantly, they would've likely surrendered the policy then. The investigator recommended Aviva pay the surrender value of the policy in 2006 and refund all the premiums paid since then with interest.

Aviva didn't agree with the outcome, essentially as it felt the information provided at the reviews was in line with the policy terms, and it had been clear about the need for potential changes. But, subsequently, in order to help resolve the complaint it made an offer to pay the 2006 surrender value and refund 50% of the premiums.

This offer was put to Mr W, but he didn't accept it.

I issued a provisional decision in December 2025. This is what I said:

"At the crux of this complaint is the outcome of the policy reviews that have been carried out during the time it was in force and the information that has been provided during the time it was held. The features of the policy taken out meant it was always subject to reviews – and this was set out in the policy documentation. I've reviewed the available evidence from the time of commencement. This includes the General Accident 'Kaleidoscope' product particulars provided by Aviva, and the illustration Mr and Mrs W have provided.

I note the following from this documentation:

- *Maximum cover is the highest amount of cover that is allowed for the level of premium. A standard cover policy is designed to provide cover that is sustainable throughout life without premiums having to increase, but this is not guaranteed.*
- *In all circumstances the cover is guaranteed (regardless of investment performance) until the first review. If the cover is above standard cover, beyond the first review premiums will likely need to increase.*
- *The first policy review will take place normally after ten years and then every five years after that, and then annually after age 70 is reached. At the reviews, policyholders will be informed if the premiums are sufficient to maintain the benefits. And if they're not, premiums can be increased or the cover reduced. If changes are made the benefits are guaranteed to the next review, but if they are not accepted the benefits cannot be guaranteed and the policy will only remain in force for as long as the premiums and accumulated fund value can meet the charges.*
- *The illustration General Accident prepared for Mr and Mrs W's adviser during the sale of the policy in July 1991 indicates that the maximum level cover for the premium selected was £173,863. The selected cover was below this at £130,000. Based on assumed growth rates at the life cover selected, it was assumed the cover could be maintained for 22 years.*

Having reviewed this information, I can draw several conclusions:

- *The level of cover selected, and the premium selected impacts the likelihood for the need for changes in the future.*
- *Anything above standard cover is likely to need changes after the first review, and even with standard cover it isn't guaranteed to not have changes.*
- *There is no guarantee whether changes will be needed at reviews, or the size of the changes required to maintain the cover.*
- *This policy was taken out at below the maximum level of cover, but it isn't clear how close this was to standard cover.*
- *After age 70 the reviews are more frequent, meaning that changes could be needed every year.*
- *At the outset standard assumptions are used to estimate how long the cover can be maintained for without change (in this case 22 years), but this isn't guaranteed and investment performance will be critical to what actually happens. If performance is less than assumed at the outset, changes might be needed sooner. The performance of the policy meant that the assumptions weren't achieved in reality and changes were needed sooner than expected.*
- *The level of cover, investment performance and increases in cost of providing cover are the crucial factors in the likelihood of the need for future changes to the policy.*
- *If changes aren't accepted following a review, then the policy will lapse after the value in the policy is used up.*

In his submissions Mr W has explained that he doesn't believe the policy delivered by Aviva is what was offered as there was no mention of it ending early or of unrealistic premiums. He feels the policy was designed and administered to end when they were 70 and thus avoiding paying a benefit if they lived longer. He says the premium quoted was very low for the cost, so was not a commercial proposition.

I think it is worth clarifying that Aviva isn't responsible for recommending the policy or its suitability for Mr and Mrs W's needs at the time of sale. This isn't something I am considering as part of this complaint. But I mention this as the basis of the policy taken out - including the type of cover and benefit level was decided as part of the advice given to Mr and Mrs W by their IFA. Aviva is responsible for providing the policy, but not for ensuring it would meet Mr and Mrs W's needs. While it issued a quotation for a policy, this was provided to the IFA to support the recommendation being made. In hindsight a different type of policy (such as a non-reviewable policy) or a reviewable policy taken out on a different basis would have been more beneficial, but this isn't Aviva's responsibility.

The evidence I've seen indicates that the policy has been administered in line with the relevant terms. I acknowledge Mr W feels the policy was designed to fail, but in my view the situation that led to the policy ending is as a result of a number of factors - including the premium level selected at the outset, the relative performance of the policy and the increasing cost of providing the cover. I haven't seen evidence that the policy was guaranteed to provide the existing level of cover for the whole of life. The prospect of premium increases was a feature of the policy. While I understand why Mr W feels the size of the increases required make it uneconomical, there wasn't a limit to the increases that might be needed. It is possible if the investment growth had been better – the need for premium increases wouldn't be to the same extent. So I can't say the situation with this policy is due to failings by Aviva in administering the policy.

It's only with hindsight we know how the policy performance led to the extent of changes needed. Mr W's comments indicate the policy delivered isn't aligned with his original understanding – that they'd get a high amount of life cover for a reasonably low premium. But I don't think Aviva can be held accountable for this. As alluded to above, it is not

responsible for any misunderstanding of how the policy would work at the point it was sold, this lay with their IFA. Mr and Mrs W's expectation was that the policy would cover the inheritance tax liability on their estate, but this type of policy doesn't guarantee this. They took out a reviewable policy, so the risk of significant increases in the premiums was always there – particularly where the policy performance has been lower than anticipated compared to the initial illustrations, and as they have got older and costs increased, this has become more pronounced. Aviva was entitled to review the policy – and it was always possible changes might be needed as part of the review outcome – and there isn't a limit to the size of premium increase that might be needed. So I haven't found reason to uphold the complaint on this basis.

I've gone on to look at how Aviva has administered the policy focusing on the communications given at the reviews. In making this decision, I've taken into account the following standards:

- *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).*

Taking into account the standards I've quoted above, I think that Aviva ought to have provided Mr and Mrs W with clear, fair and not misleading information about the policy. The communications should have included key details about the policy such as its performance, the value of its underlying fund and any fees and charges that had been applied. Aviva should have provided this information within a reasonable time frame from when the standards I've quoted above began to apply. Given that the costs of the policy had overtaken the premiums being paid in 2006, I think that Aviva should have ensured that it provided Mr and Mrs W with sufficient information soon after this happened, so by the 2006 policy review.

Having considered the communications sent to Mr and Mrs W, I haven't seen that this level of information was provided. I haven't been provided with a copy of the 2001 or 2006 reviews. It is assumed they passed based on what the parties have told us. It was the 2011 review which first provided an indication that changes were needed. This review letter set out that there was now a high risk the policy may not sustain the benefits, and action was needed. Options were given to increase the premium from £53.09 to £128.57 or reduced the sum assured from £344,928.70 to £185,953.70. Aviva explained these actions would sustain the policy until the next review in 2016. Projections were also given for how long the policy would last for at the desired levels if changes were made. Mr and Mrs W did agree to increase the premium. But nothing was given to explain the costs of providing the cover were now exceeding the premiums being paid. Because this level of information wasn't provided, I don't think Mr and Mrs W were in an informed position about the policy or any possible steps they could take to mitigate future risks.

Similar information was given by Aviva at the 2016 review, and action was taken by Mr and Mrs W to increase the premium again. But by the 2017 review they were becoming extremely concerned about the policy and started raising further queries with Aviva. At the 2017 review, they were asked to increase the premium to over £300. As Mr and Mrs W request to suspend the premiums wasn't accepted, the sum assured was reduced. While the reviews weren't misleading in telling Mr and Mrs W about the changes that were required, they still didn't set out the key information about the costs of the policy or how those costs were increasing.

While not in full agreement, Aviva has made an offer to recognise it hadn't provided sufficient information about the policy from as early as the 2006 review. Essentially it has agreed to

pay the surrender value the trust would have received if Mr and Mrs W surrendered the policy in 2006. It has also offered to refund half of the premiums paid after this date with interest.

I note Mr and Mrs W would prefer for the policy to be reinstated and agree a 'reasonable' premium to provide the cover needed. However, this isn't a feasible option (even if reinstatement was possible) as the costs of providing the cover are significantly higher than the premiums that were being paid prior to the failed reviews, so it is extremely unlikely at a 'reasonable' premium would be anywhere near close to the amounts being paid previously.

I've therefore considered the likely course of action Mr and Mrs W would've taken if they'd been put in an informed position in 2006. Aviva should have explained that the costs of the policy were higher than the premiums being paid, the impact of this would be that while the policy wouldn't require any changes at that time, it would likely need changes in the future.

This is a difficult decision as it's not completely clear what course of action they would've taken. Therefore, I must make a decision based on the balance of probabilities i.e. what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

When Mr and Mrs W first received a notice of premium increases being needed in 2011, they agreed to increase the premiums but did raise some concerns with Aviva about the level of service. They said if they had known this increase was not a one off but the first of many, they would have quit sooner. But it was after the 2016 and 2017 reviews, they escalated their concerns further about the policy. This culminated in them requesting the premiums be frozen as they attempted to find a solution for their policy. After protracted correspondence with Aviva, without finding a resolution, the policy lapsed. Mr and Mrs W have been clear that it was only at this point they realised the policy wasn't performing as they expected, hence why they complained about being misled as there had been no mention or hint of high increases in the second half of the policy. So, while Mr and Mrs W did increase the premiums twice, this was before they had full grasp of the extent of the performance issues with the policy, and the need for significant future increases in order to maintain the level of cover.

So, with the knowledge that the policy could be subject to significant changes in the future and wouldn't provide the level of cover they wanted for a premium anywhere near what they had been paying for the first 20 years of holding the policy, I think it's more likely than not that they would have surrendered the policy in 2006 if they'd been put in an informed position about what the future might hold for the policy at this review.

I've then considered if they would've taken out alternative cover elsewhere. The cost of a comparable non-reviewable policy that wouldn't be subject to changes in the future, would've been significantly higher than what they were paying for this policy. It's important to note that after the 2017 review, they sought to freeze the premiums and were not prepared to accept the significant increases even though they still had a need for the policy benefit. I think this gives a good indication that the policy's costs were an important factor in Mr and Mrs W's thinking about the value of the policy.

So, in the absence of any evidence to suggest that Mr and Mrs W would've wanted to pay significantly more for a policy on an ongoing basis, which was still subject to further reviews. I don't think it's likely that they would have taken out a policy elsewhere. Therefore, I think it would be fair for the trust to also receive a refund of the premiums they've paid since October 2006 plus interest (less anything they've already had refunded due to the problems with the indexation not ceasing in 2012).

The offer Aviva has made to pay the earlier surrender value is in line with my findings. The difference with its offer compared to the above is that it has only offered to repay half of the premiums from 2016.

I acknowledge Aviva's points about being on risk during this period, and if a claim had been made at any point, the trust would have received the value attributed to the policy. I accept Aviva was on risk during the period, but this was a position it was in because of the information failings I've described above. If Aviva provided sufficient information to Mr and Mrs W, then my finding is they would never have paid the premiums as I think they would have surrendered the policy. Therefore, it isn't fair to make a partial deduction for the cost of cover for a position Mr and Mrs W needn't have been in. So, I still think it would be fair for to provide a full refund of the premiums (and not half) since the 2006 review.

I note Mr and Mrs W have put forward an alternative proposal for compensation that involves calculating a loss using the premiums due to age 85 and a sum assured of £362,175 (based on the level in 2012). I understand that they are seeking a resolution that is linked to the consequence of not having funds within the trust that are required for future inheritance tax liabilities. But I don't find this proposal to be a reasonable basis for calculating the loss as a result of the failing I've identified. The policy was never guaranteed to provide a specific level of cover (after the first review). So, while I empathise with the situation they find themselves in, I don't find reason to change the redress I've set out.

Mr and Mrs W have pursued this matter for a very long time trying to establish a proper understanding of the future of the policy and the likely changes that were needed. Aviva's handling has caused significant frustration, and put them to a lot of inconvenience when having to repeatedly raise further queries when they didn't get full answers. I think it is appropriate for Aviva to pay compensation for the impact of its handling of the situation."

Mr W responded on behalf of the trust. In summary he said:

- The requirements of the contract originally entered into should take precedence over other matters, especially on assumptions based on hypothetical behaviour in response to the information Aviva should have provided. It has been identified that Aviva failed to make it known in 2006 what the second half of the policy would look like and it should have. While a return of premiums paid after that time has been suggested, there was a failure to provide information from the start (in 1991).
- A requirement in the contract is that the fund pays the cost of cover until a benefit is claimed. The specified premium is very low and to comply with this the cost of cover needs to be less. If it is more, as Aviva have applied, the fund runs out of money and can't pay the costs. This is what Aviva has done, and it effectively ends the policy. This is a very significant event in Aviva's strategy, and it has not been acknowledged or admitted its significance.
- The terms in the contract offer a good deal. The premium is low for the benefit offered. Aviva can't avoid the contract liabilities by charging an unaffordable premium or producing a negative value fund. For this reason, any settlement should reflect the content of the contract but the return of the premium paid does not do this. He has attempted to show what the policy in the contract would look like, had it been delivered to provide a benefit after age 80. A settlement is also suggested based on the same.
- It is agreed Aviva is responsible for providing the policy. What it has provided was fully intentional. It is maintained the policy delivered was designed and administered to end early.
- A cornerstone of the analysis is an assumption the policy would have been

surrendered in 2006 for about £3,000. It may not be appropriate to say the policy would have been surrendered at this time, for this amount, when Aviva was promising a benefit of £270,000.
- It would not be possible to carry out a full analysis of the policy without taking into account the requirements of the contract. It is a legal document with serious liabilities.

Aviva responded and provided further comments, along with some further evidence including the 2001 and 2006 review letter, and the 2005 annual statement. In summary it said:

- Much of the complaint being made is in relation to the advice about how the policy was set up and that the premium was never going to be enough to allow the policy to meet Mr and Mrs W's needs – and this was the responsibility of their advisor not Aviva.
- It is not correct to say it made an offer to recognise it hadn't provided sufficient information. It disagreed with the investigator's view, and does not believe it is fair to refund premiums in circumstances where it has provided the life insurance cover for which the premiums were paid and where they would have paid out in the event of a claim. It also believes its communications have provided sufficient information about the policy for Mr and Mrs W to make decisions on whether to continue paying the premiums.
- The information provided at the point of sale made it clear that premium increases were always expected to be needed at future reviews if cover was to be maintained at the same level.
- It provided annual statements to Mr and Mrs W, specifically between 2000 and 2009. These statements included details of the benefits, and the current value of the fund together with a comparison of the fund value from the previous year to highlight how the policy was performing. They also provided a breakdown of the premiums paid to the fund in the statement period and the charges taken from the fund over the same period. These show a clear year by year trend of the charges increasing comparative to the indexing premiums, and eventually overtaking them.
- The 2001 and 2006 reviews confirmed that it could guarantee their cover until the next review. This is the intended purpose of the reviews – to assess if the benefits can continue to be guaranteed until the next review date, and only if they can't, to provide options to the policyholders to secure such a guarantee.
- From 2010 it began to show how long it expected the policy could support the benefits for, to give advanced notice of this. It is clear Mr and Mrs W's need for their cover remained throughout this period. Until 2011 they remained happy to benefit from the high level of indexing cover that they had, for the low premium that they had agreed to pay for this on the advice of their financial adviser. They could see the cost of their cover rising over the years, and it becoming more than the premiums – this was expected.
- In 2011, Mr and Mrs W agreed to increase their premium to secure their benefits until that time. The review made it very clear how long the increased premium would sustain the benefits until (2016). Again, they were provided with sufficient information to decide whether to pay the higher premium to maintain cover until 2016 or reduce their cover instead. This review expressly warned that Aviva expected to need to increase the premium at each future review, but they still chose to increase the premiums rather than quit at that time. This does not support the conclusion that they would have surrendered the policy at an earlier point in time and been without the cover that they clearly still valued.

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've reviewed the further submissions from the parties alongside everything that was provided previously. In doing so I recognise Mr W's strength of feeling about the complaint and the detail he has provided in making his points both in his initial submissions and in his response to my provisional decision.

I also recognise that Aviva has been clear that it feels it did provide sufficient information about the policy for Mr and Mrs W to make decisions on whether to continue paying the premiums, and that the offer it made was generous.

I've considered everything both parties have provided, but my findings will focus on what I consider to be central to the outcome. Having reconsidered everything, I haven't found reason to change the findings I set out in my provisional decision. I'll explain why.

Policy terms and the contract entered

Firstly, I'll address the further points Mr W has raised about the terms of the policy and his concern that it was designed to fail to meet the required needs later in life.

Mr W says Aviva has failed to deliver the policy offered. He says there was a requirement to cover a future tax liability and Aviva (General Accident at the start) offered the policy in the contract to satisfy this requirement. He says for the first 20 years the policy delivered was in accordance with the requirements in the contract that was offered. But in the second half the premium increased dramatically and became unaffordable and unrealistic. The alternative was for the benefit to be reduced to a fraction of its previous level – but a much-reduced benefit was of no interest to them.

Mr W says Aviva is responsible for designing and administering the policy to end early. He says what happened to the policy was by design and fully intentional in terms of performance and outcome. He believes Aviva will have been aware of its designed outcome, from the start of the policy until its ending when the fund was negative - as it has total control. And it made a conscious decision to disguise its intentions throughout. So, he believes there has been a failure to provide information from the outset, and not just at the point in 2006 that has been identified.

While there is common ground that Aviva is responsible for providing the policy this doesn't mean it took responsibility for ensuring it met Mr and Mrs W's needs either at the time it was taken out or on an ongoing basis. This was not Aviva's responsibility – it didn't provide advice or recommend the policy as suitable for Mr and Mrs W in 1991 – so there was no requirement for it to ensure the policy would be sufficient to meet ongoing needs to provide a benefit to cover the extent of any inheritance tax liability on Mr and Mrs W's estate. The adviser who recommended the policy is responsible for the type of policy that is recommended to meet a specific need that has been identified during the advice process – in this case that was the IFA, who Aviva is not responsible for.

The type of policy taken out did have a low initial a premium as this was the basis that was applied for when the IFA recommended the policy – and reviews are part of the contract. I haven't seen evidence to support there was any kind of guarantee about what future changes might be required – or misleading information was given about the review process. I haven't found Aviva has operated the policy outside the terms of the contract. I acknowledge Mr W doesn't agree with this and believes Aviva designed a policy that would

not provide the promised benefits later in his life. For the reasons I've explained, I don't think the evidence supports this conclusion.

While Mr W believes, from the start, Aviva's strategy required an element of misinformation to hide their intensions for the second half of the policy, I don't find this to be the case. When the policy started, Aviva wasn't to know when a claim would be payable, exactly how the policy would perform, or the extent of when changes would be needed during its duration. It did make assumptions when setting the initial premium based on applicable growth rates at the time – but for a long-term product like this there is always a risk that growth assumptions might not prove to be accurate. This brings us back to the fact the policy was always reviewable, so there was a risk of premium increases sooner, particularly if the investment growth was lower than expected and then also as the lives assure got older with the cost of cover increasing.

I acknowledge Mr W understands the policy was reviewable – but what came as a shock to him was the level of change required later in the policy's life. But I've not found that this is a result of a failure Aviva is responsible from at the outset of the policy in 1991.

Information needs during the lifetime of the policy

I've considered the further comments and evidence that Aviva has provided, but I haven't found reason to change my finding that it failed to meet all its obligations in terms of the information provided.

I've considered the further review letters from 2001 and 2006. Both of these letters provided limited information about the performance and future of the policy – essentially just confirming that Aviva is able to guarantee the life cover at the current level until the next policy review, so there is no need for changes (along with the information on the indexation increases relevant to the premium and sum assured). At the time of the 2006 review, the cost of the policy was getting to the point where it had started to exceed the premiums, but nothing was given that would alert to this.

Aviva has also provided an example of the annual statements that it was sending to Mr and Mrs W. It has provided a sample of the 2005 statement. This sets out the policy benefits and premiums and gives a valuation for the current and previous year for comparison purposes - indicating an increase in value. There is also unit values and transaction information relating to premiums and charges.

I acknowledge there is some further information about the policy performance given in the sample annual statement, including the costs of the policy. But I still don't think the format of the statement made this information as clear as it should have. I say this also in light of the fact the review letter that was sent in 2006 doesn't contain any information about the costs or performance. It appears the annual statements were sent in early October and review letters sent prior in early August. So, Mr and Mrs W would have got a review letter in 2006 before the annual statement, telling them no changes were needed. So, in my view, this has the potential for mixed messaging – between statements and reviews – and lessens the impact of any cost information that might have been provided. I also note the later statements Aviva has provided from 2010 onwards don't provide information about the costs of the policy. So, I'm not persuaded that information was provided to Mr and Mrs W at the time when the costs of the policy had started to outweigh the premiums being paid.

I acknowledge the further points made in relation to the information provided and the 2011 and 2016 reviews. But I haven't found these points change my thinking or the conclusions I reached in my provisional decision about the lack of information provided at these reviews.

It is clear from Aviva's comments in response to my provisional decision, that in making its offer to pay the surrender value from the 2006 review, it wasn't accepting it had failed to provide adequate information. This point is understood, but my finding remains it didn't meet its obligations in terms of the information provided to ensure key details about the policy such as its performance, the value of its underlying fund and any fees and charges that had been applied.

Moving to my considerations of the likely course of action Mr and Mrs W would have taken but for the information failings I've identified. As I've already explained this is a difficult decision as it isn't readily apparent what they would have done, so I make my decision based on the balance of probabilities.

In my view, the options that would have been open to Mr and Mrs W at the time of the 2006 review, with the knowledge the policy wasn't going to provide what they understood without significant changes being made in the future, can be summarised as follows:

- Reach the conclusion the policy was unable to provide what they required without significant changes and surrender it.
- Seek to make significant increases in payments into the policy with an aim of keeping the sum assured at the intended benefit level for life.
- Do nothing and continue with the policy in the hope the performance allows for the benefit level to be maintained for as long as possible until the policy can no longer be supported.

I don't find the latter two options were something Mr and Mrs W would have followed. They were concerned about premium increases in 2011, when the first failed review happened. And while they agreed to further increases in 2016, they raised concerns about the 2017 review outcome. And when they found out in 2018, the level of premium that was likely to be needed to keep the policy at the current levels until they were aged 85, they rejected this and decided to cease paying the premiums. So I don't think the available evidence indicates they would have sought to make larger increases to the contributions to the policy sooner.

I also think the evidence available doesn't support that they would have done nothing had they had sufficient information. It is clear that when Mr and Mrs W established the policy wasn't going to provide them with what they understood it would, they sought to challenge this with Aviva. They raised some concerns in 2011, but said they understood this to be a one-off event when the first smaller premium increase was communicated. And as noted previously, they have raised numerous concerns since 2017 when further larger increases were communicated.

I note Aviva's comments about the information in the 2016 review. It refers to the review explaining to Mr and Mrs W to expect increases to the premiums at every future review. Aviva points out at this review they still chose to increase the premiums rather than quit, so argue this doesn't support a conclusion they would have surrendered the policy at an earlier point in time as they still valued the cover.

I've considered this, but the 2016 review letter still doesn't explain the extent of the future changes that would be needed. I note by this point the costs of the policy were significantly more than the premiums, but this information still wasn't provided. It was also not long after this that Mr and Mrs W started to raise serious concerns with Aviva about the future of the policy, and these concerns continued until the policy lapsed. So, I don't find the fact the policy wasn't surrendered in 2016 undermines the finding I made in my provisional decision.

I've further considered whether it is likely they would have surrender the policy at a different point. In my provisional decision I set out this was likely at the 2006 review, in line with the offer Aviva made.

Mr and Mrs W previously said they would have quit sooner, had they known the 2011 premium increase wasn't a one-off event. But they've also queried whether they would have surrendered the policy for about £3,000 in 2006 when Aviva was promising a benefit of £270,000. While this level of benefit was guaranteed at this time for the next five years, it wasn't guaranteed beyond that and certainly not for the life of the policy. It was already becoming apparent that the rising costs of the policy meant the current premiums were extremely unlikely to be able to pay for the policy over the longer term (which is what has played out after the last few reviews). But Mr and Mrs W weren't given clear information about this at the time. So, the question is not as simple as whether Mr and Mrs W would have seen a surrender value of £3,000 as worthwhile, but what would they have done if all of their information needs had been met. I acknowledge Mr W says he would have taken the same action as he is now, so seeking to complain about the operation of the policy and asking Aviva to meet his expectations of the policy – which didn't include large increases to the premium. But, even if he had done this, I don't think this would have resulted in the resolution he's seeking, in the same way Aviva hasn't agreed with him now, so it still leads me to think they would likely have surrendered the policy.

I acknowledge that Mr W's preferred outcome is that the policy is reinstated with a sum assured of close to what is required to meet his future tax liabilities with an agreed reasonable premium. This isn't an option Aviva is offering and wouldn't have been an option in 2006 either. I don't find this to be a viable way of resolving the complaint based on the failings I've identified, I say this for the reasons I've already set out in my provisional decision.

Mr W has detailed an alternative suggestion which involves using assumptions relating to the sum assured being set at £362,175 and paying 5% annual premium increases until age 85. I appreciate the logic of his suggestion, but I don't think this is a viable option due to the information available on the cost of providing the cover, as this would exceed the level of premium this suggestion would involve. And it isn't something I can reasonably expect Aviva to do in light of the findings I have set out about the policy being administered in line with the terms.

Having re-considered everything, my finding remains as set out in my provisional decision that I find it most likely the policy would have been surrendered in 2006.

Putting things right

The basis of the offer made by Aviva is broadly in line with my conclusion, other than in my view the full premiums should be refunded from the 2006 review.

I note Aviva maintains it doesn't think it is fair to refund premiums in circumstances where it has provided the life insurance cover for which the premiums were paid and where they would have paid out in the event of a claim. But for the reasons I set out in my provisional decision I still think it is fair that premiums are refunded as part of the resolution.

To put things right:

Aviva needs to pay the W Trust the October 2006 surrender value, plus 8% per year simple interest from that time until the date of settlement.

Aviva should also refund all the premiums paid since October 2006 plus 8% simple interest from the date each payment was made until the date of settlement - less any premiums already refunded as part of the indexation error.

It should also pay the trustees £500 in compensation to recognise the distress and inconvenience they have suffered as a result of Aviva's handling of the queries about the future of the policy.

My final decision

My final decision is that this complaint should be upheld and Aviva Life & Pensions UK Limited needs to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the trustees of the W Trust to accept or reject my decision before 13 March 2026.

Daniel Little
Ombudsman