

The complaint

Mr P's complaint is about a Flexible Mortgage Plan (FMP) he took out in 1988 and which Aviva Life & Pensions UK Limited owned most recently. His concerns relate to three issues:

- That the redress he was paid in 2006 was calculated incorrectly due to the flexible nature of his policy. He is not persuaded that he received the same settlement that he would have if we had completed the loss calculation.
- The performance of the policy – Mr P has questioned being charged fund management fees when the policy failed to do what it was designed to over the 25-year "term".
- That Aviva applied an early redemption charge to the policy when he cashed it in.

What happened

Mr P took out his FMP to protect and repay a mortgage over a term of 25 years. The mortgage advance was for £61,500, but as some of the interest being charged on the mortgage in the initial years was deferred and added to the mortgage balance, the policy was set up with a target value and life cover of £69,750. The investment aspect of the policy was placed in a managed fund. The target value and life cover associated with the policy were increased by £15,000 in 1992 when Mr P and his partner moved home and took out a larger mortgage.

The brochure that would have been given to Mr P in 1988 detailed the following:

'INTRODUCTION

This Policy is designed to be used for buying your home. It is envisaged that your mortgage term will be recorded on our records, but not normally on the Policy.

The Policy should be issued for a premium that is in accordance with your lender's requirements. This means that at the end of the mortgage term the cash value of the Policy should equal the amount being borrowed if the lender's stipulated growth rate is maintained.

The Policy is very flexible and, since the Policy will be written without a fixed maturity date, you can usually use this Policy to re-mortgage or extend your mortgage, subject to your lender's approval.

Under normal circumstances, we expect you will cancel the Policy at the end of the mortgage term. However, we need to define the conditions under which the Policy will operate if the mortgage term is extended. There are references in this booklet to later ages and birthdays to cover these possible extensions.'

and

'Section 11 CANCELLING THE POLICY

- 11.1 *If you give Notice that you wish to surrender the Policy during the lifetime of the Life Assured, then the value of your unit Account (less an Early Termination Penalty, as defined in sub-section 11.3 below, if applicable) will be payable...*
- 11.3 *The Early Termination Penalty is an amount equal to thirty percent of all Premiums otherwise due up to the First Ordinary Unit Allocation Date but not paid.'*

Mr P complained to Aviva in 2003 about his policy having been mis-sold. Aviva rejected the complaint in a final response letter of 25 March 2004.

It appears that the complaint was reviewed again by Aviva in 2006 and in a final response letter issued on 20 February 2006, Aviva upheld the complaint. Mr P was made an offer of slightly over £5,000 and Mr P asked this Service to consider the offer. We asked Aviva for a copy of its final response letter and the calculations it had completed to establish Mr P's financial loss. We don't have a record of what we said to Mr P, but he accepted the offer made by Aviva shortly thereafter, so it would appear that we confirmed that the calculations had been done correctly.

Mr P complained to Aviva again in 2011 regarding the performance of the policy. Aviva responded by saying that when his complaint had been upheld in 2006, it had told him that if he kept the policy, it would not accept any further claims about the sale or future investment performance. It highlighted that he had kept the policy in the knowledge of the risks associated with it. In addition, Aviva commented on the investment environment over the term of the policy to that point and explained how the surrender value was calculated. Mr P also asked for some information about how the policy worked. Aviva responded by providing a copy of the 2004 final response letter which included this information.

The term of the mortgage the policy was originally linked to ended in 2013, but Mr P didn't encash the policy. He left it in force and continued to make monthly payments.

In 2025 Mr P complained to Aviva that when he had originally complained about the sale of the policy Aviva hadn't explained to him the potential consequences of keeping the policy. Aviva referred him back to the 2006 correspondence as it was satisfied that it had highlighted that if he kept the policy, he was doing so in the full knowledge of the associated risks, including any shortfall that might exist. It also confirmed the offer that was made would have put Mr P back in the position he would have been in, had the policy not been sold.

Mr P also complained about the fact that the amount he would receive on surrender would be less than the fund value. Aviva explained that units purchased at the start of the policy had an enhanced allocation rate of 105%, so more was invested than Mr P had paid. As such, if the policy was surrendered before the policyholder's 80th birthday, only a proportion of the units purchased at the outset would be returned – an 'initial unit deduction'. The percentage of the value of the initial units that would be deducted depended on how old the policyholder was at the time of surrender.

Mr P surrendered the policy in July 2025. An early-exit fee was applied to the surrender proceeds. However, Aviva subsequently wrote to Mr P in October 2025 and confirmed that the fee should not have been applied to his policy. It refunded the fee, plus interest for the time Mr P had been deprived of that money.

Mr P was not happy with the responses he received and referred the complaint to this Service. He told us that he had not referred his complaint to this Service in 2011 because he had taken Aviva at its word, i.e. he had believed what it told him in the final response letter.

One of our Investigators looked into our jurisdiction to consider the various aspects of the complaint. She concluded that we could not consider Mr P's concerns about the performance before 2019, due to the time limits contained in our rules. In addition, the Investigator concluded that we should not reconsider the complaint about the sale of the policy as Mr P had accepted the offer made to him in 2006 in full and final settlement. She confirmed that we would be considering the remainder of the complaint points.

Mr P did not agree with the Investigator's conclusions. He said that his complaint about the sale of the policy should not be dismissed without consideration, as he believes that the offer was misleading. He said that had he been aware that he would have to pay an early-exit fee when he decided to keep the policy in 2006, his decision would have been different. Mr P also said that he had raised concerns about the performance of the policy on a regular basis with Aviva – whenever he spoke to it, so his complaint about that issue should be considered in full. In addition, he highlighted that Aviva had never responded to his request that it justify the management charges it had applied, given the poor fund performance. Mr P said that he believes that the policy should have had a value of double what it paid out.

The Investigator considered Mr P's response, but she was not persuaded to change her conclusions. As such, the complaint has been passed to me to consider.

I issued a provisional decision setting out what parts of the complaint we would be considering, as follows:

- the performance of his policy after 2011.
- Mr P thinking that the management fees were too high, given the fund performance.
- The early-exit fee that was applied.

I then went on to consider the merits of those parts of the complaint. Below is an excerpt of my conclusions about the merits of the complaint and my reasons for reaching those conclusions. Below is an excerpt.

'Mr P has commented that he doesn't think anyone at Aviva understands how his policy works. Policies like his were not unusual in the late 1980s and early 1990s, and I would reassure Mr P that I have a great deal of experience dealing with complaints about such policies. At that time, a number of life assurance companies looked to provide protection policies that were more flexible than those that had traditionally been available. These policies were built on the skeleton of a whole of life policy and, depending on the date and life assurance company involved, various different protection benefits could be attached to the policy, along with investment funding for things like mortgages.

Mr P's policy is one of the earlier ones and provides life cover and an investment facility. When the policy was sold, the premium was set based on the policy needing to provide a certain amount of money at a certain time (the funding term) – in this case £69,750 after 25 years. However, as the policy was built off a whole of life policy, it meant that it didn't have a fixed term and so if Mr P later took out a new mortgage for a different amount and/or over a longer term, the policy could adapt to those new requirements, as it did when Mr P increased his mortgage in 1992. All Mr P needed to do to take the money from the policy was to tell Aviva that he wanted to do so.

The fact that the initial units purchased would contribute less to the encashment value than their face value was factored into the calculations that were made when the premium was set in 1988 and adjusted in 1992. This information was contained in the brochure Mr P was given at the time of the sale, but it would not have been explicitly documented in the illustration in 1988 as there wasn't a regulatory requirement for it to be. The life assurance company would also not have thought it necessary as the "charge" was factored into the

premium and it would not have been expected to impact the repayment of Mr P's mortgage. It was not until 2018 that charges on investment policies had to be expressed in monetary terms, from which time Aviva appears to have started documenting both the policy value and the surrender value on the annual statements. So there was nothing wrong with Aviva not highlighting this charge in any illustrations that Mr P was given at the time of the sale or in the following years.

However, Aviva has told us that it made a decision to stop applying this charge to policies in 2024. As such, it should not have been applied to Mr P's policy when he surrendered it. That said, Aviva has refunded the applicable amount and added interest to that sum to compensate Mr P for the loss of use of the money. So while Aviva made a mistake, I am satisfied that it has already put Mr P back in the position he would have been in, but for that mistake. I don't consider that it needs to do anything more in this regard.

I now turn to the matter of the performance of Mr P's policy. I would initially highlight to Mr P that while his policy had an investment element, that was not all there was too it. The policy also provided life cover. Until the value of the policy matched the amount of the associated life cover, there was a monthly charge for providing the life cover. So although most of the monthly premium was invested, taking account of the £1 monthly plan fee deduction, the cost of life cover was then deducted from the fund, so that proportion of the was not available for long term growth.

In addition, the life cover cost would have changed over time depending on the difference between the policy value and the amount of life cover provided, plus Mr P's age and the likelihood of a claim being made at any given time. The cost of the life cover would have been factored in when the premium was calculated, but this would have assumed that the policy performed as expected. Where a policy has underperformed, the life cover costs are generally higher than was originally expected, and that also impacts the overall performance of the policy alongside the performance of the funds invested in.

While I can only consider the performance of the policy from 2011, this can't be done without the context of the performance in the preceding years. While Mr P's policy was not a traditional mortgage endowment policy, it was designed to mimic that type of policy for the initial 25 years. In 1988 when Mr P was sold his policy, investments like this had historically performed very well, regularly exceeding their target values and that type of performance was generally expected to continue. However, that was unfortunately not the case. Quite simply the economic and regulatory situation is very different now from what it was in 1988 and has been for some time. That is nothing to do with Aviva or the previous life assurance companies.

I don't know where Aviva's investment returns "sit" in any table of results, but it will no doubt be more successful than some but less successful than others. Being able to say that, looking back, different investment decisions would have been more profitable than the ones actually taken is a statement of the obvious. To make judgments like that, however, would be to use hindsight and I cannot use hindsight in making a decision.

The contract Mr P had with Aviva meant that each month he paid his premium and Aviva had to invest it, taking costs as and when required from the fund. As far as I can see that is exactly what it did. Whilst the growth over the last 14 years, was not what had been hoped for, that doesn't mean that Aviva didn't do what it had to do.

A very large number of decisions were made by investment managers between 2011 and 2025 relating to investments, costs and charges. Those decisions were made in a regulated environment with layers of governance, independent scrutiny (such as by actuaries and the Regulator) and oversight. Some of the factors influencing returns were outside Aviva's

control. Even if I were to try and “drill down” to individual decisions it is very unlikely that I could point to an individual decision or set of decisions which were, without using hindsight, so manifestly bad or wrong that redress should be paid.

Mr P wants Aviva to justify the fund management charges, given the performance of his policy. As I explained above, it is not just the fund performance that has impacted the growth the policy achieved on the premiums he paid into it. It is also normal for fund management charges to be applied as a percentage of the fund value, as is the case with Mr P’s policy, and so I can’t find how Aviva has charged for the management of the investment is inappropriate. I would also say that it’s unlikely to have been in the interests of the fund managers to perform badly, and I am sure Aviva would have wanted the fund to do as well as possible. Indeed, the fund management fees would be lower in the event of poor performance. Overall, while I know that Mr P won’t agree with me, I haven’t seen anything to persuade me that Aviva mismanaged the fund or acted negligently over the period I can consider.

I am afraid the simple fact here is that Mr P invested in an investment product which hasn’t performed as well as hoped. I have seen no grounds for upholding this complaint.’
Aviva accepted the provisional decision.

Mr P did not and said that he considered there was a complete lack of understanding of the situation from any perspective other than our own, and that the provisional decision was condescending and patronising. He said that all he wants is honesty and transparency, but has received neither so far. He said that what we had given was a pat on the head like he is a child and a “trust me we know what we are doing” attitude. What he wants is accountability.

Mr P said it is accepted that the fund has not performed as well as he would have expected and asked why he was not entitled to ask why. He believes that over a period of nearly 40 years, Aviva had enough time to make thoughtful and timely investments so his policy came good. Mr P said that he had asked many times for a breakdown of what the fund management charges were for – what active management of his policy had been performed to justify the charge being made. His minimum expectation of this Service was that we would instruct Aviva to answer the questions he has asked about how his funds were managed, or not as the case may be, and provide a breakdown of what was used for life assurance premiums, what was invested and what the active management of the fund had been. He said he had paid for active management of his money, and he had seen no evidence it had been. In relation to the exit fee, Mr P said that it was not a mistake that it was applied, rather it was at best ‘*blundering incompetence*’.

What I’ve decided – and why

I have issued a separate decision confirming my conclusions regarding the parts of the complaint I am considering.

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

I would like to apologise if Mr P found my explanations and conclusions condescending and patronising. That was not my intention, I simply wanted to ensure that he was aware of the mechanisms of how his policy worked given that some aspects of its operation had not been highlighted previously, especially in light of the impact this would have on some of his concerns.

I would also confirm that this Service is independent and impartial; we do not represent the interests of businesses, nor are we consumer champions. So without intending any discourtesy to Mr P, I will decide this complaint without influence or favour being shown to either party. In reaching my decision, I will have regard for the law, regulatory rules and guidance, and good industry practice where relevant, but my overarching responsibility is to decide what is fair and reasonable in the circumstances.

Mr P has said that he asked for a breakdown of what the management charges are for, and what the life assurance costs have been. While Mr P has now clarified what he wants, I don't think that this came across in his previous interactions. The way he had previously phrased this issue was that he wanted Aviva to justify the amount it had charged for the fund management, based on the performance of his policy, which is a very different thing.

Aviva will be able to provide confirmation of what the fund management charge applicable to Mr P's policy specifically covered. However, it would include things like managing the fund including transaction costs (for buying and selling assets), accounting, valuation of the fund, audit fees, regulator fees, the cost of legal advice where necessary, the cost of systems and administration, and the cost associated with employing individuals to make the decisions and administration associated with managing the funds. The monetary amount of the fund management charge, policy fee and benefit charges would have been provided to Mr P in more recent years on an annual basis, but if he wants that information for earlier years, he should ask Aviva for it. I would, however, manage Mr P's expectations as this information may not be available for the entire duration of his policy, given that the policy has been transferred between different life assurance companies and systems.

Furthermore, if Mr P were to ask for a further breakdown of the amount of the fund management charge for the various different activities, that's not something that we would generally expect to be provided. When a consumer asks for information we do expect most things relating to the policy to be given, including charges, values, fund performance reports, but complicated, bespoke information that would be onerous, time consuming and expensive to produce, would not be something we would expect a business to provide. That would also apply to Mr P wanting a breakdown of all the purchases and sales of assets within the fund.

In order to uphold a complaint, I have to be satisfied that the business complained about did something wrong. The fact that Mr P expected his policy to provide him with more money than it did when he encashed it, does not mean that the policy or the fund was mismanaged. I understand that Mr P would like us effectively to dig to find evidence that Aviva has done something wrong, but that is not our role. We consider complaints on the evidence provided. If that evidence indicates the financial business may have done something wrong, then we will ask further questions. However, there is nothing in the evidence provided that indicates Aviva did anything wrong, other than Mr P's belief that it must have. As I explained in my provisional decision, it would seem that it is simply a case of a product that was designed to build up a particular sum at a particular point didn't do that because of market conditions, as was the case for a significant proportion of policies arranged for that purpose.

In relation to the exit fee, Mr P said that it was not a mistake that it was applied, rather it was at best '*blundering incompetence*'. He is entitled to his opinion, but I remain satisfied that what Aviva has done to rectify its error is sufficient in the circumstances.

Mr P has questioned on what grounds the complaint points I was considering the merits of were not being upheld, as I had not provided an explanation. I think there has been some misunderstanding, as Mr P has explained why he does not agree with my explanations of why I have not upheld these complaint points.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr P to accept or reject my decision before 10 April 2026.

Derry Baxter
Ombudsman