complaint

Mr and Mrs W's complaint is that Aviva Life & Pensions UK Limited misled them regarding the possible maturity value of a Traded Endowment Policy (TEP) they bought in 2001. They say they relied on Aviva's endowment promise that it would pay £3,400 in addition to the maturity value. However, it transpired they were not entitled to this as it had been a second hand policy bought on the open market.

background

I issued a provisional decision in October 2015, in which I set out the background to this case and my findings. A copy is attached and forms part of this decision.

I invited both parties to respond with any further comments they had. Aviva had no further comment to make on the findings. Mr W responded as follows:

- The provision of misleading or incomplete information by Aviva was a text book definition of mis-selling as he relied upon this when making investment decisions.
- Aviva had written to Mr W over a dozen times over a ten year period leading him to believe that the endowment promise would apply to his policy. This was despite knowing that he wasn't the original policyholder. Aviva had also paid out the endowment promise on other similar policies he held with it. The onus wasn't therefore upon him, even as a "sophisticated investor", to investigate whether the promise applied to this particular policy.
- Sole responsibility was being placed on him as the policyholder to question and challenge information being supplied by Aviva. Aviva wasn't being held to the same standard.
- Aviva's assertion that the promise was paid to qualifying policyholders from money left over after meeting its other commitments was disingenuous. The average performance over the period in question was over 6%. But the payout was limited to 1.27%. It wasn't therefore possible to conclude that non-qualifying policyholders hadn't been disadvantaged by the payment to qualifying policyholders.
- It appeared to be my and Aviva's conclusion that Mr W hadn't suffered a loss. This seemed to be based on the fact that he had received more from the policy than he'd paid for it. But on the basis of making a decision to maintain the policy due to misleading information, he'd been denied the opportunity to invest for much higher returns.
- A court would reach a different decision.

my findings

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

To firstly address Mr W's claim that Aviva's provision of misleading information constituted a mis-sale, as set out previously Mr W bought the policy through the secondary market with no advice given by Aviva. But so far as Mr W has said that what he considered to be misleading information prompted him to maintain the policy, I understand the point being made.

However this is where our opinion crucially differs. Whilst we are in agreement that Mr W maintained the policy in the belief that the promise applied to the policy, I remain of the view

that Mr W ought to have been aware – importantly at that point of deciding to continue with the policy – that the policy no longer qualified for the promise due to its second hand status.

It's accepted by all parties that the existence or otherwise of a promise played no part in Mr W first buying the policy. And so, as also set out previously, this was the first point at which it was confirmed that the policy might qualify for the endowment promise.

But this possibility was introduced to Mr and Mrs W with the following wording:

"Subject to certain conditions you may receive an amount payable under "Our promise to policyholders". This is not guaranteed and for full details of our promise, please read the enclosed leaflet entitled 'Your mortgage endowment' which explains how the promise works."

The very beginning of this statement therefore made it clear that the promise would only apply under certain conditions. And the decision to continue with the policy was made because of the promise. So as someone who has described themselves as a sophisticated or experienced investor, I therefore remain of the view that it would have been a reasonable expectation for Mr W to determine whether these conditions might affect the qualifying status of the policy. This is especially so given that the promise was designed to meet shortfalls in mortgage repayments (as indicated by the reference to "your mortgage endowment") and this policy was no longer dedicated to that purpose. Mr and Mrs W – as second hand owners of the policy – would have been aware of this.

As also set out previously, had the promise been of no real consequence in deciding whether to maintain the policy or if Mr W had not described himself as being an experienced or sophisticated investor, my view as to whether it would be a reasonable expectation for Mr W to have determined whether the promise applied might be different.

I've also previously addressed the matter of the promise being incorrectly applied to Mr and Mrs W's other Aviva policies. Mr W has said that this would have endorsed his view that the promise applied to this policy. But to recap, this hadn't happened by the time Mr and Mrs W made the decision to continue with this policy. And so this couldn't have informed their decision making here.

I note Mr W's continued position that the payment of the promise to qualifying policyholders impacted on the bonuses applied to non-qualifying policies such as his own. I accept that my own satisfaction with Aviva's assurance that this wasn't the case and that the payment wasn't made from money which would otherwise be paid as bonuses may never be shared by Mr W. But in the absence of compelling evidence that this isn't the case, my view remains unchanged. Mr W has cited an average return of over 6% over the period he's held the policy, but the available evidence doesn't support this. I also think it distinctly unlikely that this will have been possible given the performance over the period of the types of investment the With Profits fund will have held. For example, certainly prior to the financial crisis of 2008/09, equities typically made up a significant proportion of With Profits fund holdings.

As Mr W will be aware, other than for a brief period in 2015, the value of the FTSE 100 index has remained below its high of December 1999 since that time. In many years, it's been substantially below this and there have been two periods of distinct decline. And so, even taking account of the process of "smoothing" and reserves which might have been held back from previous years of reasonable returns, an average annual return of over 6% between 2001 and 2013 seems improbable. In my view, 1.27% is more realistic.

Mr W's comment relating to 6% growth may still refer to the assumptions used for the promise to be applied. But as previously said, Aviva took the decision to apply the promise to qualifying policies (and to some non-qualifying policies incorrectly) even though the With Profits fund didn't perform as expected – not *because* it had achieved growth of 6% p.a.

As to whether Mr and Mrs W have made a loss, I should make it clear that it hasn't been my position that this is because they've received more from the policy than they've paid. Rather, my point has been that Mr and Mrs W have received what they are due as a maturity value from the policy. As such, and given my other findings as to what Mr W ought to have known about the application of the promise to the policy in 2003, I don't think the possibility of higher returns elsewhere is relevant here.

Finally, I note Mr W's comment that a court would make a different determination on the facts of the case. I can't say what a court might decide, but Mr W is aware that, whilst having regard for the law and the relevant regulations, this service operates on the basis of what is fair and reasonable in all the circumstances of the case. And taking into account the specific circumstances of this case, for the reasons set out I remain of the view that the complaint shouldn't be upheld.

my final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 5 February 2016. If Mr and Mrs W decide to reject the decision, they will still be able to pursue the matter in court, subject to the usual time limits.

Aviva originally paid Mr and Mrs W £100 in respect of the expectation of receiving the endowment promise. Aviva accepted my recommendation in a previous provisional decision to increase this to £250. But as I'm not now upholding the complaint, I can't require Aviva to pay that additional amount. It would therefore be up to Aviva as to whether it remained prepared to pay that.

Philip Miller
ombudsman

COPY PROVISIONAL DECISION

complaint

Mr and Mrs W's complaint is that Aviva Life & Pensions UK Limited misled them regarding the possible maturity value of a Traded Endowment Policy (TEP) they bought in 2001. They say they relied on Aviva's endowment promise that it would pay £3,400 in addition to the maturity value. However, it transpired they were not entitled to this as it had been a second hand policy bought on the open market.

background

I issued my provisional findings in May 2015. The background was described as follows:

Our adjudicator had recommended that the complaint should be upheld. He said he was persuaded by Mr and Mrs W's submission that they would have invested differently if they'd known the endowment promise wouldn't apply. He therefore suggested that Aviva calculate the value Mr and Mrs W would have held if they'd surrendered the policy in 2003 and invested the monies and premiums elsewhere.

Aviva disagreed. It said if Mr and Mrs W knew of the endowment promise prior to the review in 2003, this would have been from information provided by the previous policy owner. This would have set out the conditions under which the promise applied. However, if they didn't know about the endowment promise, then they wouldn't have based their decision to buy the policy upon this.

Mr W in particular was a sophisticated investor and it seemed unlikely he would have committed to the policy without understanding the terms and conditions, Aviva said. It was accepted that the policy information provided to Mr and Mrs W was misleading. Mr and Mrs W had suffered a loss of expectation and so should be offered an amount of £200, as suggested by the adjudicator, to reflect the inconvenience caused. But Aviva did in any case provide a hypothetical loss calculation which it said demonstrated they had suffered no loss, even at an assumed interest rate of 8% pa.

The adjudicator conveyed this information to Mr and Mrs W, but they disagreed with Aviva's calculation. They said there was a loss of around £1,600, even at a more modest interest rate of 5.68%. This reflected the mid-point between the investments they would otherwise have invested in. Mr and Mrs W provided evidence of these investments.

Mr and Mrs W further said that money has been withheld from them. As money had been diverted to compensate investors benefitting from the endowment promise, it followed that anyone without the benefit of the promise was being financially disadvantaged, they said.

The bonuses added to the policy since 2003 would suggest that Aviva had only made annual profits of 1.27% pa. But this wasn't the case, and even if it were, the promise would have failed for all policyholders as it was conditional on the investment earnings averaging 6% pa after tax.

As Aviva had achieved in excess of 6%, it wasn't possible to conclude that money hadn't been withheld on the basis of the declared bonuses since 2003.

Aviva responded to confirm that the difference between its figures and Mr and Mrs W's could be explained by the fact that it hadn't compounded the rate of return and had also used a net figure of interest. However, it said that the loss calculation was in any case for illustration purposes only. It didn't accept that Mr and Mrs W had been reliant upon the endowment promise when they bought the policy. It wasn't until its incorrect review letter in August 2003 that Mr and Mrs W would have been aware of this.

The adjudicator maintained his view that Mr and Mrs W had been under the impression that the endowment promise applied to their policy when they bought it and would have invested differently if

they'd been aware that it didn't from 2003 onwards. He said that a compounded interest rate of 5.68% pa should be applied to the surrender value available in August 2003. Simple interest of 8% pa should be added to the premiums paid thereafter as these could not be invested in the accounts cited by Mr and Mrs W.

Aviva disagreed. It said that Mr and Mrs W had invested on the basis of what they believed to be a guaranteed return but they had not known of the endowment promise. Information provided by Aviva in a questionnaire when the policy was bought didn't include this. At the 2003 review, it was made clear that certain conditions attached to the endowment promise and as a sophisticated investor, it was reasonable to expect Mr W to enquire as to these conditions.

The review mailings were illustrations of what Mr and Mrs W could expect from the policy and alerted them to the prospect of it not reaching a target amount to repay a mortgage. But there were also annual bonus notice mailings which didn't include the endowment promise and so would have enabled Mr and Mrs W to track the plan's actual performance.

Aviva also didn't think Mr and Mrs W would have surrendered their investment after only two years as they hadn't factored the endowment promise into their decision to invest.

My findings in the provisional decision were as follows:

I said that Aviva had confirmed that the quotes provided to the endowment resale company didn't include the endowment promise. And so it seemed unlikely to me that Mr W and Mrs W made their decision to buy the policy on that particular basis. I noted that Mr W had himself said that he performed a simple calculation that, even with the total amount of premiums still to be paid (£4,853), the total of the sum assured (£7,809) and the bonuses already accrued (£4,308), he would make a profit. The likely addition of bonuses up to maturity made the investment an attractive proposition, even without the inclusion of the endowment promise.

Mr W had said that he was first aware of the promise over 10 years ago. He said that he thought it was first made in 2000 and was widely reported in the media. Mr W also said he was directly mailed about it. But the first record I could find of Mr and Mrs W being made aware of the promise which attached to this specific policy was in the 2003 "red letter". This said that the promise of up to £3,400 would be added. But it also said that this would be payable under certain conditions.

As far as I could tell, Aviva didn't set out the specific conditions in its leaflet entitled "Your mortgage" until the red letter of 2008. But if Mr W had been aware that bonuses had reduced and he was relying upon the promise thereafter, as an experienced investor and in the absence of any specific detail relating to these conditions, I agreed with Aviva that it seemed a reasonable expectation that he would have researched the conditions under which it would apply. Had he done so, he would have been informed that certain exclusions, such as the sale of the policy to a third party, applied.

If on the other hand Mr W had relied on the assumption of an unspecified promise amount when buying the policy in 2001, I also considered it to be a reasonable expectation that he would have enquired as to its value and whether any conditions applied.

I noted that bonus rates had reduced by 2003. I didn't doubt Mr W's comment that he would have surrendered the policy if he'd been aware that the promise wouldn't apply to the policy. I was also of the view that Aviva could have made it clearer as to the specific conditions which applied. But I thought it was nevertheless the case that it made reference to the promise being subject to certain conditions. In this instance, given Mr W's investment experience and his stated reliance on the promise from that point on, I considered this should reasonably have prompted him to enquire further.

I also noted Mr W's comment that money had been withheld from investors who didn't benefit from the endowment promise and that Aviva must have made more than the average 1.27% annual bonuses declared on his policy. But I didn't think that one of the conditions of paying the promise was that the fund had to achieve 6% pa. Rather, my view was that this was a method of calculating the

value of the promise in 1999, based upon a projected 6% pa growth rate to maturity. If there was a projected shortfall at this rate of return, this was the basis of the endowment promise amount.

As to the effect of the endowment promise on With Profits policyholders who didn't benefit from it, I noted the payments would be made from the free reserves, described by Aviva as the money left over after setting aside enough to pay its commitments to all policyholders.

I could appreciate that Mr and Mrs W were in any case disappointed with the returns on the policy. But I said that, although Mr and Mrs W may already have been aware of this, it was worth noting that, overall, investment conditions have been markedly different from those which were present when the endowment was bought. This would have affected both the annual and terminal bonuses applicable to the policy. I also thought it worth noting that, although equities are only a part of the asset make-up within a With Profits fund, the FTSE 100 index at the date of the decision was roughly the same as its high point of December 1999. In other words, due to poor market conditions, the value of that basket of shares was equivalent at that point to what it was 14 years ago.

However, I was of the view that Mr and Mrs W had been sent misleading information, most recently the inclusion of the endowment promise in the maturity values. I could therefore fully appreciate they expected this to be paid, and would have been dismayed to then learn it wouldn't. I said I could understand this would have been upsetting for them.

But I also said that Mr and Mrs W have not suffered an actual financial loss, as they've received the full maturity value that was payable from the policy. And for the reasons set out above, I considered it would have been a reasonable expectation for an experienced or sophisticated investor to have enquired as to the conditions which applied to the endowment promise.

I noted that Aviva had accepted that Mr and Mrs W had been caused trouble and upset as a result of the wrong information it provided. It's therefore agreed that £200 should be payable in respect of this, as recommended by the adjudicator. But I considered that a higher payment was warranted in this instance and that, in line with similar cases dealt with by this service, a total payment of £250 would be more appropriate.

My provisional decision was that I upheld the complaint. I said that, in resolution of the matter, Aviva Life & Pensions UK Limited should pay to Mr and Mrs W a total of £250.

I offered both parties the opportunity to respond to my provisional findings. Aviva had no further comment.

Mr and Mrs W (and their representative) disagreed with my findings. In response, their representative made the following comments:

- Both I and Aviva were wrong in saying that Mr and Mrs W bought the TEP on the basis of the endowment promise. This wasn't the case and documentary evidence supported this position. The issue was the ongoing investment decisions made on the basis of false and misleading information provided by Aviva.
- The suggestion that the case related to a "hypothetical loss" is wrong. It was about the loss of opportunity as Mr and Mrs W would have made different decisions if they'd known the promise didn't apply to their policy.
- They agreed with the comment in the provisional decision that "it wasn't possible to conclude that money hadn't been withheld on the basis of the declared bonuses since 2003".
- Aviva had commented that as Mr W was a sophisticated investor, it was reasonable to expect him to enquire as to the conditions which attached to the policy. But the courts have found in Payment Protection Insurance (PPI) cases that financial firms shouldn't be able to hide behind small print in terms of policy exclusions.
- Given the underperformance demonstrated by statements over the years, it was impossible to conclude that Mr and Mrs W would have maintained the policy but for the endowment promise factored into the return.

- My comment that it was a reasonable expectation for Mr W, as an experienced investor, to have researched the conditions which applied to the promise, was wrong in law. The obligation wasn't on Mr W to research the conditions when Aviva knew what conditions would exclude the promise. It failed to send Mr and Mrs W correspondence about the promise over a period of ten years. This was the very essence of mis-selling.
- My comment that it was likely Mr and Mrs W would have surrendered the policy if they'd been aware the promise wouldn't apply – and that Aviva could have made the specific conditions clearer - was accepted.
- My comment that Mr W's reliance on the endowment promise to maintain the investment should have prompted him to enquire about the conditions which applied wasn't accepted. This was wrong in law. There was no reason for Mr W to challenge letters which in any case detailed the promise or research whether the promise applied to him. If he wasn't going to be a beneficiary of the promise, Aviva shouldn't have included the promise information when it wrote to him.
- The provisional findings didn't mention the other policies with Aviva where the endowment promise was honoured. The fact that other policies which Mr W had bought in the secondary market had already paid out – inclusive of the promise – undermined the suggestion that Mr W should have researched the conditions which applied to his policy. It was unclear as to whether Aviva had paid these promises in error. But this was irrelevant to the fact that it justified Mr W's reliance on the promise as these had been paid on earlier maturing policies.
- The return on the policy was not an issue. It would be expected that some policies would perform better than others.
- As to whether Mr and Mrs W had suffered an actual financial loss, normally a loss of opportunity would be difficulty to prove. But as the complaint was being upheld, the court would be a better forum in which to quantify the losses. The provisional decision said that there had been no loss as the policy had paid what was due. But this didn't take into account the earlier comment in the decision that money had been diverted from other policies to pay out on those which Aviva had decided would benefit from the promise.

I was concerned at what appeared to be a clear misinterpretation of what was set out in the provisional decision within the representative's response. At my request, the adjudicator sought to correct these. Notably, it was pointed out that I hadn't said that Mr and Mrs W had relied upon the promise when buying the policy. In fact, I'd said the opposite.

It was additionally clarified that at no point was it my own commentary in the provisional decision that Mr and Mrs W's policy had been disadvantaged by payments to other policyholders who benefitted from the promise. I should point out that where this comment was made in the provisional decision, it is an account of Mr and Mrs W's own points – not my own. That is why the comment appeared in the "background" section - along with the account of Mr and Mrs W's other comments - rather than in "my findings".

The adjudicator also enquired of Aviva as to whether a similar endowment promise had been paid out on certain other policies held by Mr and Mrs W. It confirmed that it had been paid out in error on three policies between 2010 and 2012. It hadn't been paid out on two others. However, Aviva also confirmed that it wouldn't be seeking repayment of the endowment promises paid in error.

In response to this information, Mr W replied as follows:

- The two policies which didn't pay promises had not been expected to – no promise had been made. But they had matured earlier at a time when bonuses had been better.
- The fact that the promise had paid out on three other occasions undermined the assertion that he should have researched the conditions which applied.
- Mr W confirmed that the promise hadn't been factored into the decision to buy the policy in the first place. But the bonuses being applied made the purchase attractive.
- When it became clear that these bonuses weren't being sustained, the policy would have been surrendered - but for the promise which he was told applied.

- It was unclear as to whether the provisional decision agreed or disagreed with the position that funds had been diverted from some policyholders to pay for the promise which applied to others.
- Mr W didn't accept Aviva's comment that the promise payments would be made from free reserves. Only by reducing bonus payments to zero did Aviva have sufficient reserves to fund these payments. And so money must have been diverted from one group of policyholders to another.
- Profits during the period were considerably more than 6%, or Aviva wouldn't have honoured the promise. The return was 10.4% in 2010 – and so there was no reason why the payout under the policy had been limited to only 1.27%
- Although it might not be possible to compel Aviva to pay the promise, it should be possible to require it to compensate for the loss sustained by not being in an alternative investment during the period in question.

my provisional findings

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

To firstly address what appears to be a continuing source of some confusion, I'd reiterate that it isn't my view that funds have been diverted from what would be paid to other policyholders to pay the endowment promise to those who are eligible for it. As set out above, this comment was an account of Mr and Mrs W's own opinion.

I don't share that opinion, for the reasons already set out. I note Mr W's continuing position that the returns must have been in excess of 6% pa for the promise to have been made. But as explained in the provisional decision, this percentage return was used to determine the value of the promise at maturity – ultimately it wasn't Aviva's requirement that this be met to actually make payment. For example, it said in its review letters that although returns had been lower than this, it was in any case honouring the promise payments. I also have no reason to doubt Aviva's confirmation that the promise was paid to policyholders from free reserves rather than funds which would otherwise be due to policyholders to whom the promise didn't apply. This was also set out in the review letters.

Turning to the issue of whether Mr and Mrs W should have been aware of the conditions which applied to the promise, I've noted the comments that an expectation of Mr W researching the conditions which applied to the promise would be "wrong in law". I should explain at this point that, whilst having regard for the law and relevant regulations, my decision must reach conclusions which are fair and reasonable.

I'd agree that if Aviva had made no mention of conditions which would apply to the promise, then it wouldn't have been reasonable to expect Mr W to have proactively researched whether any conditions applied. But this is not the case here. Aviva set out that conditions applied to the endowment promise in its review letter of August 2003. This is the point at which Mr and Mrs W have said they took the decision to continue with the policy – on the basis of the promise as set out in that letter. But the fact that conditions applied wasn't in my view hidden in "small print". It said the following towards the top of page two of the letter:

"Subject to certain conditions you may receive an amount payable under "Our promise to policyholders". This is not guaranteed and for full details of our promise, please read the enclosed leaflet entitled 'Your mortgage endowment' which explains how the promise works."

This was the also the first time in the review letter that the promise was mentioned. And so Mr and Mrs W's first awareness of the existence of the promise attached to the policy was in the form of a sentence which began with the phrase *"Subject to certain conditions…".*

As far as I can tell, the conditions themselves weren't included with that mailing. A previous mailing in 2001 when the promise was first entered into did specifically include the conditions. But from the

information contained in the file, the next instance that I can see when they were specifically set out was in the review letter of 2009.

The question I've had to consider is what did Mr W and Mrs W understand the phrase *"Subject to certain conditions"* to mean? And what importance ought reasonably to have been attached to this in their decision making in 2003? If Mr W hadn't been an experienced investor and wasn't in any case reliant upon the promise in making the decision to maintain the policy, I might take the view that this would have had limited relevance and importance for him and Mrs W.

But this is not the case here. Mr W has described himself as a "sophisticated investor" who relied upon the promise in deciding to continue with the policy in the face of deteriorating bonus rates. I therefore still consider it's a reasonable expectation that he would have looked into those conditions to ensure that there were no relevant exclusions. Had he done so, I think it would have become apparent that the promise wouldn't apply to TEPs.

It's also been said that the application of the promise to other maturing policies would have reinforced the notion that the promise applied to this policy. But I note that none of the policies to which the promise has been incorrectly applied matured before 2010. This couldn't therefore have contributed to the decision to maintain the policy in 2003.

I'll also address the other comments made by Mr and Mrs W's representative. I note that it's been said that Aviva's failure to send details relating to the promise over a period of ten years was the essence of mis-selling. I'm uncertain as to what's meant by this – there was no sale or mis-sale here on the part of Aviva. Mr and Mrs W bought the TEP through a third party.

As to the provision of information over the period in question, I acknowledged in the provisional decision that Aviva could have been clearer about the specific conditions which applied to the TEP. But I consider there to be a relevant intervening factor here – notably Aviva saying that conditions applied. If Mr W had looked into the conditions – which as a sophisticated investor who was reliant on that very promise I consider he ought reasonably to have done – this would alerted Mr and Mrs W to the fact that the promise didn't apply to their policy.

With regard to the nature of Mr and Mrs W's loss and whether this is one of opportunity or an actual loss, I don't consider this to be relevant here. My view remains that the policy has paid to Mr and Mrs W the correct value. And so there's no loss for which Aviva should be held accountable.

As such, I've given further thought to the previously set out position that I was upholding the complaint on the basis of Mr and Mrs W being sent information about the promise which would ordinarily apply to the policy. Having done so, I'm of the view that there is a conflict here which needs to be addressed.

To explain, I've reached the provisional conclusion that it was reasonable to expect that Mr and Mrs W would have found out whether the conditions which applied to the promise affected them – the promise being their fundamental reason for keeping the policy. This is in my view the intervening factor which means that Aviva shouldn't be required to pay the promise. Therefore, on the basis of that finding, the inclusion of information about the promise in later mailings should have made little difference. It follows therefore that there's in fact no basis upon which to uphold the complaint.

I have, however, also noted the representative's comment about leaving the determination of any actual loss to the court if I was upholding the complaint. There may be some confusion here relating to our role and that of the court. For clarity, we are an informal dispute resolution service which is an alternative to the courts. If Mr and Mrs W had accepted a final decision in which I was upholding the complaint, the matter wouldn't then be referred to the court for an award to be determined. Mr and Mrs W would have needed to accept or reject the decision, including whatever award that contained. If they had accepted a final decision, any award would have been binding on both parties, without the need to then go to court.

But if they had decided to reject a final decision on the matter, it wouldn't be binding on either party and so they'd be able to pursue the matter in court. This course of action will in any case remain open to Mr and Mrs W if they decide to reject this proposed outcome.

my provisional decision

My provisional decision is that I don't uphold the complaint. Aviva originally paid Mr and Mrs W £100 in respect of the expectation of receiving the endowment promise. Aviva accepted my recommendation in my previous provisional decision to increase this to £250. But as I don't propose to uphold the complaint, I can't require Aviva to pay that additional amount. It would therefore be up to Aviva as to whether it remained prepared to pay that.

Philip Miller
ombudsman