

## The complaint

Mrs R and Mr R complain that Aviva Life & Pensions UK Limited cancelled their reviewable whole of life policy and that it should have done more to inform them their policy would likely be impacted by changes in their resident country's law after the UK left the EU.

## What happened

Mrs R and Mr R purchased a whole of life policy with Aviva in the UK, but they are now residents of another country. The policy became subject to the laws of that country after the UK left the EU. At the first review after the UK left the EU Aviva told Mrs R and Mr R that a premium increase was required to maintain the level of cover, or the sum assured would need to change - and because of this the policy had to be cancelled. Aviva continued to collect premiums on the policy for several more months. Mrs R and Mr R complained to Aviva that it hadn't taken reasonable steps to keep them informed how their resident country's law would affect their policy after the UK left the EU and wanted the policy to be re-instated and to be compensated for the distress and inconvenience the matter caused them.

Aviva says new legislation adopted by Mrs R and Mr R's country of residence on 16 December 2020 - that came into force on 1 January 2021 – meant that any customers who were originally resident in the UK but were now resident in the same country as Mrs R and Mr R, would not be able to make certain changes to policies they have with Aviva. And, if changes were needed, for example following a review, there's no alternative but to cancel the policy. Aviva referred to correspondence it had sent Mrs R and Mr R in January 2021 and November 2021 and says this provided guidance and suggested customers should seek financial advice. When Aviva became aware premiums were still being collected in error it refunded the premiums plus interest and paid Mrs R and Mr R £150 for the inconvenience this had caused.

Mrs R and Mr R brought the complaint to the Financial Ombudsman Service and one of our Investigators looked into things. The Investigator thought Aviva had acted fairly and. Mrs R and Mr R asked that an Ombudsman decides the complaint.

As I reached a significantly different outcome to our Investigator, I issued a provisional decision and sacked for any further comments from Mrs R and Mr R and Aviva. In my provisional decision I said:

*"The crux of this complaint is that Mrs R and Mr R feel that Aviva should have done more than it did to prepare for changes following Brexit and inform them how their policy would be affected. I intend saying that it would have been fair and reasonable for Aviva to tell Mrs R and Mr R of the potential changes to their whole of life policy before the transition period ended on 31 December 2020. In respect of the additional premiums Aviva collected after the*

*policy had been cancelled, I intend saying that the Aviva's decision to refund the premiums plus interest, and its payment of £150 for the inconvenience this caused Mrs R and Mr R, is a fair and reasonable remedy. I will now explain why.*

*Aviva first wrote to Mrs R and Mr R in January 2021. This was some three weeks after Mrs R*

and Mr R's country of residence adopted new legislation stating that that it was no longer possible to make certain changes to policies like the one Mrs R and Mr R held. I acknowledge Aviva complied with the legal requirements placed upon it by the EU country in which Mrs R and Mr R are now residing. Aviva had knowledge of changes in law made by Mrs R and Mr R's country of residence in 2019 that would more likely than not impact Mrs R and Mr R's whole of life policy but didn't tell Mrs R and Mr R until January 2021.

In February 2019, the country in which Mrs R and Mr R now reside issued an order that 'clarifies the rules applicable to insurance contracts validly taken out before leaving the United Kingdom with British insurers on the basis of the European passport. It confirms the obligation of insurers to execute these contracts, despite the loss of recognition of their approvals in {resident country}. However, these contracts cannot be renewed nor give rise to the issuance of new premiums, under penalty of nullity;'

In an order in March 2019 the same country ordered that a business must inform customers affected of the above within 15 days of a 'change in situation', which referred to the end of the Brexit transition period. On 16 December 2020 new legislation was passed by Mrs R and Mr R's country of residence to revoke the legislation from February 2019.

The end of the Brexit transition period was 30 December 2020 and Aviva wrote to Mrs R and Mr R on 13 January 2021 to tell them of the impact of the recently passed legislation. The letter explained the changes based on Aviva's understanding at that time and provided details of where Mrs R and Mr R could access updates on-line if Aviva's understanding changed. In the letter Aviva, for the first time, told Mrs R and Mr R that they would be unable to 'renew or extend your policy beyond the current terms and conditions – if you have a life policy, options such as extending your cover or converting your policy to another type of policy may no longer be available if it's not allowed for in your terms and conditions.' In the same letter Aviva explained 'We'll continue to update this as further information becomes available so we would recommend you review this regularly. If any new information materially changes the position from the information provided in this letter, we will contact you again to inform you.' Aviva gave Mrs R and Mr R a contact number if they required any further information but explained it couldn't give specific advice – suggesting Mrs R and Mr R may wish to contact a financial adviser if advice was required.

Aviva says it couldn't write out to customers until it understood and rationalised the potential impacts for its customers. Aviva says it monitored key updates from UK and European regulators and assessed the potential implications for its customers and maintained close dialogue with the UK regulator, the Financial Conduct Authority (FCA) and sought external legal advice. Aviva says that there was no certainty on the position throughout this period as the transition period allowed UK-EU negotiations to take place to determine what the future relationship would look like.

Aviva was aware of changes imposed in law by Mrs R and Mr R's country of residence in 2019 but didn't tell Mrs R and Mr R about any changes until January 2021. By this time, it was too late for Mrs R and Mr R to change the premium or sum assured, consider any other options, or seek independent financial advice. Brexit created uncertain times for Aviva, and I have some empathy with Aviva that it felt it needed further clarity the changes to Mrs R and Mr R's policy during 2019 and 2020, but I feel that Aviva should have done more to make Mrs R and Mr R aware of the changes already adopted by their country of residence. So, in the circumstances of this complaint, I intend saying Aviva should reasonably have informed

Mrs R and Mr R of any potential change to their policy earlier than it did. I think that if Aviva had done this Mrs R and Mr R wouldn't have been as shocked as they were, and they could have explored other options – albeit they would likely be limited in view of their ages – or taken independent financial advice. In my opinion Aviva's lack of communication in this

*regard was unfair to Mrs R and Mr R and created significant distress, upset, and worry and caused them significant inconvenience over many months.*

*Mrs R and Mr R say Aviva published an update on its website in late August 2021, but they didn't see it until December. Mrs R and Mr R feel that they should have received this information direct from Aviva, or at least an alert. However, I think Aviva had made it reasonably clear in its letter of January 2021 that updates would be provided through the website, so I think it's fair and reasonable for me to conclude Aviva did provide regular updates in this regard in 2021.*

*In November 2021, Aviva wrote to Mrs R and Mr R and provided a further update that if a future review shows that the premium paid for the amount of cover must change, it will need to cancel the policy. Aviva said it would contact Mrs R and Mr R at the next review, but the policy could be cancelled now if that was their wish. The same letter explained the policy would remain in force, if not cancelled, but if it needed to be cancelled at the next review date the cash-in value would be payable. Further links were provided to obtain financial advice if required.*

*Taking all of this into account, I'm persuaded that after January 2021 Aviva did keep Mrs R and Mr R informed of the changes to their policy – both on-line and by letter. Mrs R and Mr R say they didn't receive letters from Aviva, or they took longer to receive than they should have, but I'm satisfied it's more likely than not these letters were sent by Aviva, and I don't think it's reasonable for me to conclude Aviva is responsible for any postal delays.*

*When the whole of life policy failed a review in March 2022 Aviva should have cancelled the policy in-line with the law imposed by the resident country, but it carried on collecting the premiums for a while. When Mrs R and Mr R pointed this out to Aviva, it refunded the premiums it had collected in error, plus interest, and paid Mrs R and Mr R the sum of £150 for the inconvenience this had caused. I think this is a fair and reasonable remedy in the circumstances, so I don't intend asking Aviva to do anything else in this regard.*

*Mrs R and Mr R's policy was cancelled in 2022 after the failed review. The policy had failed previous reviews and the sum assured, which was on a maximum sum assured basis, had been reduced in line with the policy terms and conditions. I've no doubt that Mrs R and Mr R feel that the lack of communication Aviva provided about the potential changes to their policy has caused them significant inconvenience and distress. However, as Mrs R attained age 70 in early 2023, I do think it's more likely than not any reviews completed after 2021 wouldn't have resulted in a different outcome. Because of this I think it's more likely than not the policy would have to have been cancelled by 2023 at the latest.*

*I appreciate Mrs R and Mr R want the policy to be re-instated, but I'm afraid I can't tell Aviva to do this as the law in their country of residence doesn't permit this. Mrs R and Mr R also asked why Aviva couldn't have transferred the policy to another of its businesses. Aviva has explained that it did transfer some of its customers to another of its businesses, but this was business written in the EU under the Freedom of Services Passporting permissions. Mrs R and Mr R's policy was written in the UK and intended for UK residents. As Mrs R and Mr R have relocated to their country of residence, and this is outside the UK, I intend saying it isn't reasonable that I should tell Aviva to undertake the transfer of an individual policy as this would likely involve a lengthy legal process including Court approvals."*

*My provisional decision said I intended asking Aviva to pay Mrs R and Mr R £500 for the significant distress and inconvenience caused by its failure to tell them of the new laws adopted by their country of residence – in February and March 2019 - and the possible impact of these on their policy.*

Neither Mrs R and Mr R nor Aviva accepted my provisional decision. I have read and considered all of the comments and documents provided and I will address what I consider to be the relevant comments in my final decision below.

### **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 understand that Mrs R and Mr R will be disappointed, but I've decided that my provisional decision is a fair and reasonable one and I have adopted it as my final decision. However, I will address the comments and documents provided by both parties below.

Aviva says that The Financial Conduct Authority Handbook states that if the subject matter of the complaint has been the subject of court proceedings - which Aviva consider the Ordinance I've referred to is (albeit outside of the UK) - the Financial Ombudsman Service can choose to dismiss the case. Aviva asked that I consider dismissing the complaint under DIPS 3.3.

In this case I don't think it would've been reasonable for me to consider dismissal. The complaint Mrs R and Mr R are making is about Aviva's communications and administrative failures in respect of cancelling the whole of life policy with less than one month's notice. The Ordinance I've referred to isn't the subject of this complaint – it's what Aviva did after the Ordinance was passed that is at the heart of this complaint.

Aviva also pointed out that given the position remained unclear, confusing, and uncertain during the Brexit transition period and until the December 2020 Ordinance was published. Aviva says it would have been misleading for it to write out to Mrs R and Mr R ahead of the December 2020 Ordinance. My provisional decision dealt with this point. I explained I had some empathy with the position Aviva was in, but I'm still persuaded Aviva should have done more to make Mrs R and Mr R aware of the changes already adopted by their country of residence before the Ordinance of December 2020 was published. I think this would have kept Mrs R and Mr R informed of any potential changes to their policy even if these were later changed before the UK left the EU.

Mrs R and Mr R have clearly and passionately explained that at each review of the policy they'd chosen to maintain the sum assured and as a result premiums increased. This makes it clear that the policy was incredibly important to Mrs R and Mr R and vital to their peace of mind. I remain persuaded that Aviva didn't tell Mrs R and Mr R that the policy could be cancelled without due consultation until January 2021, even though previous Ordinance highlighted this was possible – and I think that is poor service.

Mrs R and Mr R have referred me to previous policy reviews that said Aviva wouldn't reduce the benefit below a minimum guaranteed amount. However, I'm satisfied that these reviews were conducted prior to the Ordinance being passed in 2019 and 2020, so I don't think what Aviva said was wrong at the time. And, but for the Ordinance I've referred to, it seems more likely than not that the Aviva policy would have continued to operate on the basis of the terms and conditions – as it did until the country in which Mrs R and Mr R now reside passed the December 2020 Ordinance.

The transition period allowed UK-EU negotiations to take place to determine what the future relationship would look like. Negotiations were ongoing until the end of the transition period in December 2020. This provides important context as the Ordinance passed in February and March 2019 were preparations for a no-deal transition of the UK from the EU and would only come into effect when the transition completed without agreement. These Ordinance

were replaced by new Ordinance on 16 December 2020 as the end of the transition period approached without an agreement. I'm satisfied that the December Ordinance replaced the earlier Ordinance and, crucially that the 15 days of a "*change in situation*" effectively started on 31 December 2020. The policy held by Mrs R and Mr R had no term to it as it was a whole of life policy and further links for help and guidance were provided. I trust that this further explanation makes it clear why I'm satisfied Aviva's letter of 13 January 2021 reasonably met the requirements of the Ordinance that had been passed.

Mrs R and Mr R asked me where in the 13 January 2021 letter it said they would be unable to "*renew or extend your policy beyond the current terms and conditions – if you have a life policy, options such as extending your cover or converting your policy to other type of policy may no longer be available if it's not allowed for in your terms and conditions.*"

In my attempt to paraphrase what was said in the January 2021 letter I mistakenly used quotation marks. I'm sorry for the confusion this may have caused, and I've included below the full section of the January 2021 letter. Mrs R and Mr R have already confirmed they have this letter in their possession.

*"On the basis of our current understanding, from 1 January 2021 we will not be able to action your request to:*

- make any changes to the percentage or amount you currently pay in or add anyone-off payments to your policy although this might be possible if the change in payment is already clearly set out in your policy terms and conditions and doesn't need any instruction from you or us to implement this;*
- add cover to your policy for new individuals;*
- change the level, or type, of cover;*
- change the term of the policy or access the benefits in your policy earlier or later than you originally planned;*
- take out a new policy with us or renew or extend your existing policy.*

*Please note that your policy may not necessarily allow or include some of these options."*

This hasn't impacted my final decision that the letter of 13 January 2021 was the first time Aviva told Mrs R and Mr R that the level of cover and what they pay **could not be changed**. Mrs R and Mr R have expressed the view that this letter doesn't mention "*life policy*". However, on the copy letter Mrs R and Mr R provided there is reference to "*your policy*" several times. At the top of the first page the product is highlighted as "*Prime Life*" and includes Mrs R and Mr R's specific policy number. This persuades me there is enough information in this letter to highlight the changes referred to would have an impact on Mrs R and Mr R's whole of life policy. For clarity, I'm not persuaded by Mrs R and Mr R's view that this was a general letter to all Aviva's expat customers.

Mrs R and Mr R asked that I remove reference to their age from my decisions. I think it's important my decision reflects that I took into account that the cost of life cover is impacted by age. It's clear that the cost of providing life cover was increasing on the policy – as can be seen from past review letters – and that replacing the life cover when the policy was cancelled would mean Mrs R and Mr R's ages would likely limit any choices for like for like cover. In respect of the terms and conditions relating to the policy, it was important to note that the policy would be reviewed each year after a life assured reached age 70. As I

explained, an increase in premium would more likely than not have been due in 2023 at the latest. I'm sorry if this upset Mrs R and Mr R – it was not my intention.

Mrs R and Mr R say that if Aviva had contacted them in advance of the UK leaving the EU and provided clear information, they would have been prewarned of possible adverse consequences for the policy. For clarity, I've upheld this part of the complaint. Aviva's lack of communication in this regard was unfair to Mrs R and Mr R and created significant distress, upset, and worry and caused them significant inconvenience over many months.

Mrs R and Mr R say that Aviva's didn't "safeguard" their policy and that my provisional decision didn't deal with this. I think that it did, but I will clarify my position.

The transition of the UK from the EU was a prolonged affair and as Mrs R and Mr R accept there were many unknowns. Other EU countries allowed similar policies to the one Mrs R and Mr R held to be passported – and not to be cancelled at a review. I appreciate that's no consolation to Mrs R and Mr R, and I accept it must have added to their frustrations. It's now possible to look back on events with hindsight and Mrs R and Mr R have asked whether Aviva should have done more to protect their policy from the changes imposed by their country of residence. I considered all of the circumstances but, as my provisional decision said, I don't think Aviva could have taken steps to protect – or safeguard – against the possible outcomes at the end of the transition period, as there was no certainty on the position throughout this period. The transition period allowed UK-EU negotiations to take place to determine what the future relationship would look like, and as negotiations were still ongoing it doesn't seem unreasonable to me that Aviva decided to wait until it could give a definitive update on how Mrs R and Mr R's country of residence had decided how it would treat the policy when the UK left the EU.

As I've decided that Aviva made Mrs R and Mr R reasonably aware that their policy could be affected in January 2021, there was time – albeit limited – for Mrs R and Mr R to seek financial advice. Aviva made it clear to Mrs R and Mr R that it couldn't give advice but provided some links - and Aviva were no longer authorised in Mrs R and Mr R's country of residence. I appreciate Mrs R and Mr R say they were unable to find anyone to help them in this regard, but I don't think that is something I can say is the fault of Aviva.

In respect of the additional premiums Aviva collected after the policy had been cancelled, I've decided that Aviva's decision to refund the premiums plus interest, and its payment of £150 for the inconvenience this caused Mrs R and Mr R, is a fair and reasonable remedy. I won't be asking Aviva to do anything else in this regard.

### **My final decision**

I've decided that Aviva Life & Pensions UK Limited should pay Mrs R and Mr R £500 to resolve the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 31 January 2024.

Paul Lawton  
**Ombudsman**