

The complaint

Ms J and Mr M have complained that Aviva life & Pensions UK Limited ('Aviva') didn't correctly compensate them for their Lifetime Security Plan in 2002 following a Regulatory Review.

What happened

In July 1997 Ms J and Mr M took out a reviewable whole of life policy – a Lifetime Security Plan – along with a mortgage from a predecessor business of Aviva which took over responsibility for the administration of the policy in 2011.

In 2002 it was found that the Lifetime Security Plans had been under-priced, and the regulator directed that a review be carried out with a view to compensation. As a result of the review Aviva added £370.42 worth of units to Ms J and Mr M's policy in July 2002. Ms J and Mr M were written to at the time but didn't receive the letter.

In May 2021 Ms J and Mr M submitted a Data Subject Access Request ('DSAR') to Aviva but in error it provided data that included other customers' information. Ms J and Mrs M deleted this information at the request of Aviva. But prior to the deletion of the data Ms J and Mr M say they found evidence that other customers were compensated differently than their own policy. They wanted to know more about this.

Ms J and Mr M corresponded with Aviva and raised a complaint. Aviva responded to the DSAR issue, but Ms J and Mr M were given differing information about the review and what remediation had taken place for their policy. Aviva issued its final response to Ms J and Mr M's complaint on 10 March 2022. It said;

- In relation to the DSAR it explained the disparity in the number of documents that had been provided – they were duplicates or didn't contain data referring to Ms J and Mr M. It thanked them for their help in destroying the incorrect information sent in error. It had previously explained how the data error had occurred and had apologised. Ms J and Mr M's new DSAR request had been dealt with and there was nothing missing or outstanding regarding this.
- Its 'gone away' process had been addressed by this service in 2021.
- Regarding the 2002 Regulatory Review, Lifetime Security Plans were within its scope and mispricing wasn't limited to policies taken out for inheritance tax ('IHT') planning on a standard cover basis. But it was only these policies that the Lifetime Security Plan Compensation Project remediated with an on-going top up to the premium.

All other policies to be compensated were given additional units into the policy. Its previous response wasn't clear about this, and it apologised that it had been suggested that maximum cover policies weren't affected or that other mis-pricing factors might not have been applied to Ms J and Mr M's policy.

There wasn't a record of the compensation calculations for individual policies but as the policy was taken out for family protection – it covered a mortgage, rather than for

IHT planning – the compensation would be by a one-off addition to the units held in the policy.

- Any information shared with other businesses had been for the purpose of ensuring Ms J and Mr M received complete and accurate answers and information.
- It offered £350 for the time it had taken to respond.

It provided an additional response to Ms J and Mr M's complaint on 14 April 2022. Remaining dissatisfied with the outcome, Ms J and Mr M brought their complaint to this service.

Our investigator who considered the complaint didn't think that Aviva needed to do anything more. She said;

- Ms J and Mr M were correctly compensated with a one-off addition of units into their plan rather than an ongoing top-up to the premium. This was in line with the regulator's guidelines and Aviva acted fairly by complying.
- Regarding the 2021 DSAR and Aviva sending data which included other customer information, this service couldn't make a finding on whether a data breach occurred – that was the role of the Information Commissioner's Office ('ICO'). But we could look to see if the request itself was dealt with in the appropriate timescales.
- Ms J and Mr M issued two further DSARs which Aviva responded to plus it also provided additional information in response to queries. It provided everything it held and which it was required to do.
- Aviva had paid a total compensation of £850 for delayed responses and the error made with the initial DSAR. This was more than this service would recommend and the investigator thought the outcome was fair.

Ms J and Mr M didn't agree with the investigator. They provided further information and evidence for the investigator's consideration, but that didn't cause the investigator to change her mind.

As the complaint remains unresolved, it has been passed to me for a decision.

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'm aware I've set out the background to this complaint in far less detail than the parties and I've done so using my own words. And I'm not going to respond to every point that has been made by the parties involved. No discourtesy is intended by this but, I've focused on what I consider to be the key issues here. Our rules allow me to take this approach and it reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it as I haven't, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

After reviewing the complaint file about the DSAR and the 2002 remediation, I have reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

2002 remediation

On 11 July 2002 Ms J and Mr M were written to by the Lifetime Security Plan Compensation Team of (the predecessor of) Aviva. That letter goes on to say;

‘As you know, we have identified an error in your Lifetime Security Plan. I am pleased to tell you that we have now amended your Plan to put it into the position that it would have been in if no error had been made.

Action taken to correct the problem

We have corrected the error in the administration system so that the problem will not affect your Plan in future.

We have also added units to your Plan to increase its value. This means that you now have the value of units that you would have had if the administration error had not occurred.

Value of your Plan before units were added	Value of your Plan after units were added	Increase in value of your Plan
£1,348.62	£1,719.04	£370.42

.....’

When Ms J and Mr M later sought more information about the 2002 addition of units to their policy, they were given various explanations and conflicting information about the adjustments that had been made. I appreciate this must have been very frustrating for Ms J and Mr M as they couldn’t be sure what had been added to their policy, or why, despite trying to seek clarity and being concerned they were treated differently than other policy holders.

Ms J and Mr M were told that only plans that were taken out for IHT purposes on a standard cover basis were topped up with ongoing premiums rather than a one-off addition of units.

But Ms J and Mr M say that when they were incorrectly sent the unredacted file further to their DSAR request they were surprised to find information that some policy holders had been receiving additional payments since 2002. And in particular correspondence suggested that a standard cover policy had received additional units as well as monthly premium top ups. They said it wasn’t correct that only policies taken out for IHT purposes on a standard cover basis were compensated with premium top ups while others received a one-off compensation.

However, my understanding is that Aviva – as agreed with the regulator – used different methodologies for the different types of policy to calculate compensation. Ms J and Mr M had a policy to cover their mortgage and remediation for that type of policy was to add units rather than top up ongoing premiums which was limited to the IHT planning policies.

Clearly my assessment of this point is limited by the amount of information and records that are still available from the time of the review. Aviva hasn’t been able to provide any of those records. And while Ms J and Mr M might not agree, I’ve not been given any reason to not to take what Aviva has said at face value. And I would also say that I don’t find it surprising that there is a lack of documentation from the time. I say this because of the length of time since the review and businesses are not obliged to keep documents indefinitely. I know Ms J and Mr M are very frustrated by this and in particular because of the information they say they gleaned from the unredacted documents they received in error.

However, I haven’t seen anything to indicate that Ms J and Mr M weren’t compensated as they should have been and in line with what was agreed with the regulator at the time of the

Regulatory Review in 2002. This is partly because I can't review the calculations behind the redress method as they simply aren't available to me. And when information or evidence isn't available to me, I can reach what I consider to be a fair and reasonable conclusion to a complaint on the balance of probabilities and what I think most likely happened.

And in the absence of all of the details, in this case, I think it's more likely than not that Ms J and Mr M were correctly compensated. I say this because the compensation methodology was agreed with the regulator at the time, and I wouldn't expect a regulated business not to comply with remediation requirements imposed by the regulator.

Aviva also told us that the review was carried out by a firm of external auditors and the outcome delivered to each individual customer. But due to the length of time that has passed, and the fact that Aviva didn't do those calculations itself, it doesn't hold that information, which I accept. However, we do know that Ms J and Mr M were written to in July 2002 about the addition of the units to their policy, so it seems likely that addition came about as a result of the under-pricing Regulatory Review.

In bringing their complaint, Ms J and Mr M say that Aviva should be open and transparent, and an independent actuary should be appointed to review their policy on the same terms as policies reviewed in 2002. To put the matter right, they say Aviva should reinstate the policy at its own cost or pay them compensation for the loss of cover.

While I appreciate that Ms J and Mr M have been given conflicting information about the remediation that took place for their policy which must have been vexing for them, I haven't been given anything to suggest to me that Aviva – despite the conflicting information Ms J and Mr M were given – hasn't been open and transparent. And I also think – on the balance of probabilities – that it's unlikely that their policy wasn't reviewed on the same terms as other similar policies during the 2002 Regulatory Review. I don't have sufficient evidence for me to conclude that they were treated differently, or to their detriment.

Ms J and Mr M have said the remediation of the policy wasn't proportionate to the problem that was identified by the regulator. The policies were mis-priced, and the premium paid would have to significantly increase to cover the benefits. As a result, their policy failed reviews in 2007 and 2013 and they want an explanation for this. However, I think this relates to the product itself and how it works. I am aware that Ms J and Mr M have raised a further complaint with Aviva about the failed policy reviews and the charges adjustment of their Lifetime Security Plan, and because of this these points would be more suited to being addressed in that complaint.

I've reviewed all of the correspondence Ms J and Mr M had with Aviva and about the 2002 remediation, how it was calculated and what it was being offered for.

Clearly there was some confusion with the information Ms J and Mr M were given in response to their enquiries about the remediation and how much it was. But Aviva has confirmed that Ms J and Mr M's policy was remediated by adding units in line with the type of policy they held. And it has apologised for any misinformation or misunderstanding. I've seen nothing to suggest this was in any way done with intent or to deliberately misinform Ms J and Mr M.

Data Subject Access Requests

It's accepted by the parties that Aviva sent Ms J and Mr M an unredacted file in error.

In response to the investigator's assessments, Ms J and Mr M said that on the basis of the information available to me they couldn't see how I could reach a different conclusion than

the investigator. They were frustrated by this and thought it unreasonable for them to have to accept an outcome predicated on vague and contradictory guesswork.

Ms J and Mr M suggested I obtain a copy of the unredacted file. We did ask Aviva for a copy of the unredacted file but because of other data contained in it, it was unable to provide it. I would expect for a regulated business such as Aviva to provide me with all relevant documentation that it is able to provide in response to a request and in order for me to assess the complaint. Similar to what I have said above, I take it at face value that Aviva isn't able to provide the information and I've seen nothing to suggest there is anything underhand in it not providing me with a copy of the unredacted file.

Ms J and Mr M have provided notes they took when they received the redacted file which they say suggests they were treated differently than other customers. But the original information that gave rise to those notes isn't available to me to assess and in any event, it deals with other customers' compensation so I can't know what was being redressed. So, it wouldn't be appropriate, or fair and reasonable for me to reach a conclusion that Ms J and Mr M hadn't been compensated correctly because of that.

From the information I have, I'm satisfied that Aviva has dealt with Ms J and Mr M's DSAR requests as it should have done from a service point of view, albeit with some delays and I note Aviva has already offered compensation for this. But I can't comment on the information itself that Aviva has provided or whether it should have provided anything more for Ms J and Mr M than it already has. That is a role for the ICO as it deals with complaints about information rights. So, it is for Ms J and Mr M to refer any issues they may have if they wish.

Aviva confirmed to Ms J and Mr M that regarding the DSAR documents which had been redacted, that had been done because of Legal Professional Privilege. It confirmed the only documents that had been withheld or redacted due to this exemption were documents which contained legal advice or opinion provided by its lawyers as Aviva were the clients. It wasn't used as a blanket exemption, and it confirmed that all data about Ms J and Mr M had been provided in response to their DSARs. I don't find this to be an unreasonable explanation but again, Ms J and Mr M may wish to refer to the ICO if they want further investigation into this.

Overall, and taking all of the above into account, I don't think Aviva needs to do anything more. Clearly there were delays and errors in the information Ms J and Mr M were given. But with reference to the DSAR, its recognised the unredacted file was provided and Aviva have apologised for that and offered compensation.

Regarding the Regulatory Review remediation paid in July 2002, from the information available, I'm satisfied that, on the balance of probabilities, Aviva has compensated Ms J and Mr M as it should have done.

Ms J and Mr M have already been compensated with £850 because of the delays, errors and being sent the unredacted DSAR file. Ms J and Mr M don't think the compensation is adequate, but I think it is a fair reflection of the inconvenience they have suffered and is more than I would award under similar circumstances. So, I don't award any additional payment.

Taking all of the above into account, I'm not upholding Ms J and Mr M's complaint and I won't be asking Aviva to do anything more. No doubt Ms J and Mr M will be disappointed with the outcome – it's clear they feel very strongly about their complaint, and I'd like to thank them for their submissions. But I hope I have been able to explain how and why I have reached the decision that I have.

My final decision

For the reasons given, I don't uphold Ms J and Mr M's complaint against Aviva Life & Pensions UK Limited about the 2002 Regulatory Review remediation and the DSARs. I'm not asking Aviva Life & Pensions UK Limited to do anything more than it has done already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J and Mr M to accept or reject my decision before 5 January 2024.

Catherine Langley
Ombudsman