

The complaint

Mr S complains that Aviva Life & Pensions UK Limited ("Aviva") mis-sold him a whole of life policy. He wants Aviva to refund his premium payments, plus interest.

What happened

Mr S says that in October 1985 he was a student. He recalls he may have been looking for a contents insurance policy for his student accommodation, although he also mentions he was looking to save or invest. He says the adviser tried to sell him a term assurance policy which he declined. The adviser then recommended a whole of life policy. The basic sum assured was £3,221, and £46,666 with profits, and the premium was £15 a month. Mr S agreed to apply for the policy but says that, aged 19, he didn't understand the different types of policies. He complains that the policy wasn't suitable for him because he was a young student with no dependents or mortgage.

Aviva said, based on the limited evidence it held, it thought its adviser had acted with reasonable care and skill and that Mr S would have been provided with documents during and after the sale which allowed him to make an informed choice about whether to take out the policy or not.

Our investigator didn't recommend that the complaint should be upheld. She said there was little evidence from the time of the sale, but that she hadn't seen enough to persuade her that Mr S didn't want a life policy. And, based on the rules and regulations in place at the time, she couldn't conclude the policy wasn't appropriate.

Mr S didn't agree. He said, in summary, that:

- He didn't set out to purchase life insurance because he didn't need it.
- The policy wasn't suitable for his needs, age and circumstances and resulted in financial difficulty having to keep up with the premium payments when he was a student not earning income.

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.

The policy was taken out more than 35 years ago and there are limited records available from that long ago. Naturally Mr S's memory of what was discussed will have faded over time and I can't be sure exactly what was discussed. I therefore reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

The advice to take out the policy was taken before the Financial Services Act (1986) came into effect. As the investigator explained, where a business provided advice when selling a product to a consumer, it had a duty to act with reasonable care and skill and make a

recommendation that was appropriate, or a was a “reasonable degree of fit” for the consumer.

I've considered everything carefully and, taking into account Aviva's obligations at the time, I find I have come to the same conclusion as the investigator for the following reasons:

Mr S was very young when he took out the policy, but I don't find it follows that he wouldn't have understood the basic difference between a life policy and a savings plan. I can see the application form he completed was headed, “Application for Life Insurance” and I'm satisfied that it's more likely than not that he would have been given product information to help him understand the main features of the policy.

Mr S says he may have been looking for contents cover for his student accommodation, but he also says he was thinking about investing in shares and unit trusts. I'm not surprised Mr S can't remember exactly why he ended up in a discussion with Aviva, because it happened so long ago. Mr S says he didn't contact Aviva because he was seeking to buy life cover, but I can't be certain that was the case. In any event, it doesn't mean it wasn't appropriate for cover to be discussed.

I understand Mr S's concerns about the sale. I accept he was young with no, or limited, income and that he didn't have a mortgage. But, for a competitive monthly payment, the policy provided with profits cover for his wider family in the event of his death. I can't conclude this isn't something Mr S wanted at the time.

Mr S says he didn't have enough income to meet the premium payments and that this led to financial difficulties. But I can't see that he missed any monthly premiums. And, bearing in mind he recalls he was interested in investing in shares, it's likely he had the money to afford the premium for this policy. I've not seen evidence to persuade me that the policy led to financial difficulties.

It's possible Mr S could have taken out a different policy or an investment or savings plan. But, whilst there may have been more suitable alternatives for his money, it doesn't make the whole life policy he took inappropriate.

Mr S raised concerns with our investigator about the validity of the policy because he was a foreign student. But Aviva confirmed this wouldn't have affected a claim under the policy terms.

Overall, I can't conclude the policy wasn't a “reasonable fit” for Mr S.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 October 2023.

Elizabeth Dawes
Ombudsman