

The complaint

Mrs M brings a complaint on behalf of the estate of her late mother, Mrs B. She says that Aviva Life & Pensions UK Limited failed to make Mrs B aware that her Over 50's policy had lapsed. This meant that when Mrs B came to pursue a claim in 2023, it could not be paid.

To resolve the matter, Mrs M wants the claim to be paid now, less any missed premiums.

What happened

Mrs B sadly passed away in early 2023. When administering Mrs B's affairs, Mrs M discovered paperwork that indicated Mrs B had paid into an Over 50's policy with Aviva. She therefore asked Aviva on 6 January 2023 about the possibility of pursuing a claim.

Aviva told Mrs M that it could not pay out any claim; Mrs B's policy had lapsed in 2017 due to unpaid premiums.

Mrs M firstly complained to this service. She said that Aviva had written to Mrs B at an old address – however, she had moved into a form of sheltered accommodation by that time. She submitted that Mrs B had never been made aware of her policy lapsing, because Aviva had not written directly to her at any time. She said she wanted Aviva to reinstate the policy (with unpaid premiums met if required) and pay the claim.

One of our case handlers assisted Mrs M in lodging the complaint with Aviva.

On 7 February 2023, Aviva rejected the complaint. It said it hadn't been able to collect the usual monthly direct debit in December 2016 and it wrote to Mrs B about that. Since premiums were unpaid in January 2017 and February 2017, it cancelled the policy. It had written to what it believed was the correct address on three occasions about the lapse.

Aviva said it was not able to consider reinstatement of the policy with Mrs M making up the unpaid premiums. This was because Mrs B had sadly since passed away, and the policy was not in force at the time of the insured event of her death.

Mrs M explained how the amount of money was a mere drop in the ocean to Aviva – she felt it had not given fair consideration to Mrs B's circumstances. She had told Aviva how Mrs B was sadly suffering from a type of dementia, and that was why she'd had to move away.

One of our investigators reviewed the complaint. She said that the policy had been fairly lapsed, and she did not believe it was reasonable to require that Aviva reinstate it.

Mrs M said she wanted the complaint to be referred to an ombudsman. She said, in summary that:

- a large company like Aviva ought to be able to judge cases individually and with discretion;
- Mrs B had clearly intended to leave sufficient funds to pay for her funeral, knowing she had no estate to speak of;

- even if Aviva was willing to return the premiums Mrs B had paid (of approximately £1700) that would be a reasonable gesture;
- the policy is a miniscule amount compared to the profits Aviva generated each year;
- she intends to publicise this matter if Aviva doesn't do the right thing;
- Aviva should show more care for customers with dementia;
- matters relating to Mrs B's funeral remain unresolved because Mrs B had no assets at the time of her death;
- Mrs M cannot afford to pay to release her late mother's ashes;
- the situation with Aviva has caused her immense distress.

Aviva did not make any other comments, and the complaint was then referred for an ombudsman's review.

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 thank the parties for their considerable patience whilst this matter awaited allocation to an ombudsman. Before I go further, I'd like to send my sincere condolences to Mrs M and her family – I was very sorry to learn that Mrs B had passed away. I realise that given the nature of Mrs B's health and financial circumstances, things have been particularly tough for Mrs M.

I do not wish to upset Mrs M further and I realise that my decision will be a disappointment for her. But for the reasons I'll summarise below, I am unable to uphold this complaint.

Mrs B took out a Post Office Over 50's Life Cover policy, which was administered by Aviva. It began on 23 April 2008, and it had a monthly premium of £15. In return for Mrs B paying premiums up to 23 April 2028 (after which point the premium payments would cease), the policy would provide a lump sum life assurance benefit of £3,069.

I can see Mrs M has made points about Mrs B's intent to pay the premiums to ensure she had cover for her funeral expenses. I don't doubt that Mrs B would have wanted to retain her cover; Mrs M has told us how her deteriorating health meant she had to move away from the address that Aviva held for her and therefore the lapse letters were never received.

Nonetheless, I don't believe that intent is the key factor in this complaint. I need to be fair to both parties; my remit is to reach a fair and reasonable outcome in the circumstances. I can't uphold a complaint merely because of my empathy for a complainant's circumstances. In this case, Aviva's duty was to operate the policy in accordance with the terms and conditions, and what is key is whether it acted fairly when it couldn't collect the premiums.

Aviva could cancel the cover if premiums were not paid within 30 days of their due date. The premium of 23 December 2016 went unpaid when the direct debit couldn't be collected. In a letter of 30 December 2016, Aviva explained to Mrs B that it would try to collect the direct debit again on 16 January 2017. It also said that:

"Important note - we can stop your cover if we don't receive payment within 30 days of the premium due date. If this happens all benefits under this policy will end."

When the second premium collection failed, Aviva wrote to Mrs B again on 27 January 2017 noting how if no premium payment was made by 17 February 2017, the policy would be cancelled. Accordingly, it sent Mrs B a third letter noting the cancellation on that date.

I know that all of these letters were sent to an address which Mrs M says Mrs B had moved away from – and Mrs M says that they weren't forwarded to Mrs B. However, Aviva did not know of about that. It could not have been aware of the change to Mrs B's circumstances or her change of address without being informed. Therefore, it correctly followed the lapse procedure which required it to contact the policyholder at the address it held in its records.

Aviva has behaved fairly because it has acted within the terms of the policy. It is not obliged to pay a claim if the premiums are outstanding and it can terminate the policy after 30 days has passed from non-payment of any premium.

I realise Mrs M feels strongly that Aviva could apply discretion and pay a claim; accordingly she asks that this service ought to compel Aviva to do so. However, I disagree.

To reiterate, when considering what is fair and reasonable to both parties I must refer to the contract of insurance that Mrs B took out. That contract set out the terms that both parties must adhere to; primarily that Aviva would provide the insured death benefit of £3,069 if Mrs B were to pass away, in return for continued payment of the monthly premiums (to 2028 if applicable).

The premiums were paid in return for the continued cover that Mrs B required, so I can't ask Aviva to refund them. That type of direction might be appropriate where a policy was mis-sold, but Mrs M has explained why Mrs B took out the cover for future funeral expenses and that it was something she wished to have in place.

Further, though I know Mrs M has asked us to do so, I cannot infer terms in the contract to allow for goodwill or ex-gratia payments. An insurer may well choose to apply discretion or act outside of the terms (if it does so in a more favourable way than the terms allow), but it is not something I can order it to do in these circumstances when it has otherwise acted fairly.

I do not underestimate that Mrs B was suffering from particularly difficult circumstances with her declining health, but Aviva was not at fault for that. And it could not have known she had moved into sheltered accommodation without being informed by Mrs B or a representative. Therefore, it wrote to the address it had on its records, which had been in place since 2008.

Since Aviva has acted within the policy terms, I cannot order it to reinstate the life assurance policy such that a death benefit claim can be assessed now.

The policy premiums ceased in 2017 and Mrs B's policy was lapsed fairly at that time without any request to reinstate it. That sadly meant there wasn't a contract of insurance in place at the time Mrs B passed away in 2023, and it is not possible to have the policy reinstated retrospectively.

My final decision

Despite my empathy for Mrs M's circumstances, I cannot not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs B to accept or reject my decision before 9 January 2024.

Jo Storey
Ombudsman