

The complaint

Miss N's complaint is about a life and investment policy she had with Aviva Life & Pensions UK Limited. She's said she was given misleading information about the policy benefits continuing after the end of the premium-paying period, as she believed the benefits would continue despite her taking the policy value at the maturity date.

What happened

Miss N took out a Low Start Homebuyer Plus Plan in 1998. It was a whole of life policy that could be set up to work in the same way as a mortgage endowment policy; designed to provide a lump sum at the end of a mortgage funding term equal to the amount of the mortgage it was being arranged to cover. Miss N's policy had a funding target, death benefit and serious illness benefit of £30,000 over a term of 25 years. If a valid claim was made for either of the protection benefits, the policy would pay out the benefit amount and would end. The policy was invested in a with-profits fund.

At the end of the mortgage funding term, Miss N then had the choice to take the value of the policy (with all benefits ending) or to leave it invested and the benefits would continue. If Miss N chose the latter option, the serious illness cover would end when Miss N reached the age of 70, but the death benefit would run for the earlier of the whole of Miss N's life or when the fund value was depleted and could no longer pay the cost of the cover. When the fund value reduced to zero, all benefits would cease.

In August 2021 Miss N called Aviva for an update on her policy, as she was still using it as the repayment vehicle for her mortgage. She was given values for the basic sum assured, the surrender value and the amount that would be paid out on death at the time. Miss N then asked for clarification of her understanding of the policy as she was unsure of how it worked. She explained that when it was taken out she thought it ended at the point she stopped paying into it. However, she now understood, with the implication being from a previous conversation with Aviva, that some of the benefits stayed in place after the policy finished if she paid it right to the end.

Aviva's member of staff then confirmed there were expiry dates on some of the benefits associated with the policy. The serious illness policy ran until the date Miss N turned 70, but the death benefit didn't expire – it was for the whole of her life. Miss N asked whether that meant the benefit continued even after she finished paying off the policy and her beneficiaries would receive that money, and that her estate would benefit no matter when she died. It was confirmed the policy was a whole of life plan so she would have the benefit until she passed away. It was again confirmed what the death benefit was, but that it would fluctuate up and down based on fund performance.

Miss N has told us she called Aviva in early 2022 and was told that if she took the value of the policy when the premiums ended, the protection benefits would remain in place. Aviva has confirmed it searched for calls from Miss N in 2022 using both of the telephone numbers it has on record for her, but it could not locate any calls.

In February 2023 Miss N called Aviva again for another update – she wanted to check the value would cover what was left of her mortgage. Miss N again asked for clarification about the policy. She said when she took it out she hadn't realised if she continued paying to the end, the death benefit carried on until a date that matched her 70th birthday. She asked to double check she had understood that properly.

Aviva confirmed the date she had mentioned was the date the serious illness cover ended, and that the death benefit was for the whole of her life, so there was no end date. Miss N explained that her understanding had been that when she finished paying, the benefits ended, but she now understood the policy would pay off her mortgage and the death benefit would pay out afterwards. The Aviva member of staff at that point sought clarification of how the policy worked and explained to Miss N that if she took the policy value, the policy, including the protection benefits, would end. Miss N complained that she had been misled the previous January when she had discussed the policy with Aviva. She said she specifically asked that the policy would provide her endowment and the other benefits would continue.

Aviva responded to the complaint in a letter of 21 February 2023. It set out how the policy worked and confirmed that it could find no record of the telephone call in 2022 which was when Miss N said she was given incorrect information about the policy.

On 28 July 2023 Aviva sent Miss N a letter about her policy which was titled 'Premium expiry'. It explained that in line with the policy conditions, although premiums were due to stop, the policy would continue to provide cover.

Miss N then asked the Financial Ombudsman Service to look at her complaint. She told us she took the policy out knowing that she would be covered if she became ill and couldn't work, or if she died. She has told us she was told in early 2022 that if she took the value of the policy at maturity the life and critical illness cover would continue.

One of our Investigators considered the complaint, and he recommended that it be upheld in part. He was satisfied that in August 2021 Miss N had been given incorrect information about the policy and that her misunderstanding about how the policy worked could be attributed to that information. However, this error had been corrected the next time Miss N spoke to Aviva and the policy had been administered correctly. As such, the Investigator recommended Aviva pay Miss N £150 compensation for the upset the mistake had caused her.

Aviva didn't accept the Investigator's conclusions. It highlighted that Miss N had not been told the policy could continue even if she took the policy value, and was told that if the policy was surrendered the benefits would end. It didn't agree that she had been misinformed and said it could not be held responsible for her misunderstanding. It asked that the complaint be reviewed and if the Investigator was unable to change his view, it be referred to an Ombudsman.

The Investigator listened to the August 2021 telephone call again and confirmed to Aviva that his view had not changed – Miss N had been given incorrect information which would have led to her misunderstanding the policy benefits.

Aviva asked that the complaint be referred to an Ombudsman. It said that Miss N had specifically told it that she had been told even if she surrendered the policy, her benefits would continue, but the telephone call clearly didn't say that. As such, Aviva considered it had not made any errors and the complaint should not be upheld. Aviva also highlighted that Miss N had called to ask questions about surrendering the policy and so the information she was given related to that context and we should view it in that way.

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.

Miss N stated to both Aviva and this service that she spoke to it in early 2022 about the policy and that is when she was given misleading information. It appears Miss N is referencing a conversation that took place five to six months earlier than this. It also appears from the content of that call, there may well have been an earlier conversation too, but we don't know when that was, nor do we have a copy of that call. That said, I don't think it is necessary to hear that call for me to reach a decision on this case.

Aviva has highlighted that the telephone call in August 2021 should be viewed in the context of Miss N thinking about surrendering the policy. While she did call for an up-to-date value for the policy, reasonably a surrender value, I don't consider the conversation should be viewed as Aviva has suggested. Once Miss N was given the relevant numbers, she asked for clarification of how the policy worked, as what she had been told at some point in the relatively recent past didn't match with what she'd previously understood. She was given correct information about the expiry dates of the benefits associated with the policy, but what she was not given was an explanation of how the policy worked, which is what she needed and reasonably had asked for.

It is clear from both the telephone calls that Aviva provided this service with that neither of its members of staff understood how the policy worked. In the case of the second call, the member of staff admitted this, as the policy was very old, and sought the appropriate guidance during the call. At which point Miss N was given all of the information she needed to understand what would happen, even if she wasn't provided with a proper explanation of what the policy was – that it was effectively a hybrid policy that in her case had been set up to act as a mortgage endowment, rather than its base product of a whole of life policy.

I know that Aviva will disagree with my conclusion, but I don't consider it provided Miss N with the service she had a right to expect in August 2021 and by implication from what she said in that call, at some earlier date. She was clearly unsure of how the policy worked at that time and asked for clarification. While the factual information Aviva provided her with was correct, it was provided in the context of Miss N having taken out a whole of life policy for the sole purpose of providing protection benefits, rather than the policy having been set up to act as a mortgage endowment. This left Miss N to attempt to interpret what she had been told from an uninformed position, and meant her conclusions were incorrect.

I can only conclude this was poor service on the part of Aviva and due to a lack of understanding of the policy by its member of staff. While I don't think Miss N understanding the policy and its benefits properly in 2021 would have made any difference to the position she is now in, it did cause confusion and raised her expectations. I consider she should be compensated by Aviva for this. Our Investigator recommended £150 and I am satisfied this is an appropriate amount in the circumstances.

My final decision

My final decision is that I uphold this complaint. In full and final settlement of the complaint I order Aviva Life & Pensions UK Limited to pay Miss N £150 compensation.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss N to accept or reject my decision before 12 January 2024.

Derry Baxter
Ombudsman