

The complaint

Ms H complains that Aviva Life & Pensions UK Limited (formerly AXA Sun Life) referred to as “Aviva” or “*the business*”, cancelled her policy without permission.

What happened

Aviva says it sent a letter to Ms H in 2010, confirming the next steps that she needed to take in order to keep the plan running. But because it didn’t hear back, the policy became paid up. The business confirmed that this didn’t mean the policy was cancelled.

Ms H says that because she didn’t give permission, she wants the policy reinstated to its previous (normal) status.

According to the investigator’s summary, the last premium for the policy was paid on 23 March 2009. Just after this date, Ms H began the process of transferring her bank account. In April and May 2009, the business wrote to Ms H requesting updated bank details but received no reply.

In May 2010 the business sent Ms H a letter confirming that her policy had been made paid up because it hadn’t received any payment since 23 March 2009. In June 2010, Ms H wrote back confirming her bank account change, and that she’d been told by the bank that her direct debits had been transferred over.

In response the same month, the business explained that it hadn’t received a request to change the bank details, despite her bank suggesting that it ought to have. But it still gave Ms H the opportunity to reinstate the policy, providing she made a cheque payment of £105 covering the outstanding payments. The business also asked her for her latest direct debit details, but it didn’t hear back from her.

One of our investigators considered the complaint but didn’t think it should be upheld. In summary he said in the circumstances the business hadn’t behaved unreasonably by converting the policy to a ‘paid up’ status. He also noted it also gave Ms H the opportunity to pay the missed premiums, provide new direct debit instructions and reinstate her policy but never heard back from her.

Ms H disagreed with the investigator’s conclusion and asked for an ombudsman’s decision. She feels like she’s been messed around and lied to and made a fool of by the business. So, she’d like the ombudsman to take another look.

As no agreement has been reached, the matter has been passed to me for 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.

Having done so, I agree with the investigator's conclusion, for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Ms H says, I'm unable to safely say that the business behaved unreasonably in the circumstances by rendering her policy paid up (without her express permission) when it couldn't take payment for the plan on two or more separate occasions, despite it asking her to make payment.

Before I explain why this is the case, I think it's important for me to recognise the strength of feeling Ms H has about this matter. She has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope she won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised under a separate subject heading, or undertake a forensic analysis of the evidence, it's not what I'm required to do in order to reach a decision in this case. I appreciate this can be frustrating, but it doesn't mean I'm not considering the pertinent points in this case.

My role is to consider the evidence presented by Ms H and the business, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case – I'm not here to take sides.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but perhaps unlike a court or tribunal I'm not bound by this. It's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I don't uphold this complaint, in brief, for the following reasons.

- The business made clear what would happen if it didn't receive payment within a certain period of time. Ms H would've agreed to these conditions before going ahead with the policy, therefore it's unlikely she wasn't aware – or she ought reasonably to have been aware – what would happen if the premiums weren't paid on time.
- If Ms S didn't read the key policy documentation, it's not something I can blame the business for.
- The responsibility to make payment, and on time, including covering any missed payments was with Ms H. I can't blame the business for her not meeting her responsibility regarding the payment of premiums. I don't think there's any doubt the business wasn't providing cover for free.
- I understand that just after the last premium was paid in 2009, Ms H was in the process of changing banks. I've seen nothing to suggest that she wanted to cancel the policy, I'm mindful she's made clear that she wanted to keep the policy having paid into it all this time since 2004 and that she had no affordability issues. It's likely that there was an issue with her bank change, which meant her direct debits hadn't been set up correctly in respect of paying the business.
- Even if Ms H's bank was at fault – which I make no formal determination on – it doesn't mean that the business did anything wrong by making the policy paid up because it didn't receive the required payment. Regardless of whether (or not) the bank is to blame, the two issues in my mind are separate and distinct. Ms H is free to pursue a separate complaint against her bank if that's what she wants to do. On balance, it's unlikely that the business would've received the instructions from the bank and not responded or taken appropriate action regarding the updated instructions.

- I note the business chased her on at least two occasions regarding its inability to collect payment – it's unlikely that Ms H wouldn't have received at least one of those reminders – asking her for payment, but it seems payment still wasn't made.
- It's possible there was an issue with the post, which meant she didn't receive the reminders, but I've seen no evidence that there was. I'm mindful that all correspondence was sent to the address that the business had on file, which was also the address Ms H used in her correspondence. In any event, I can't blame the business for the actions of a third-party postal service.
- That said, I note she received the letter in early June 2010 notifying her that the plan had become paid up. I note Ms H responded and the business offered to reinstate the policy, providing she paid for the missed premiums – which I think is reasonable. I also note on that occasion the business also sent a new form asking for her updated direct debit details but received no reply.
- In the circumstances, I don't think the business has done anything wrong by rendering the policy paid up, without seeking or obtaining Ms H's consent.
- If Ms H had moved address during the material time, especially when the business wrote to her asking for payment and giving her the opportunity to reinstate the policy months after the last premium was paid, it would've still been her responsibility to notify and update the business of any change of address. If she didn't, I can't blame the business for continuing to write to the address it had on file and her not responding. In other words, on balance, it wasn't the business's fault if she didn't receive this particular correspondence.
- Whilst I appreciate Ms H might feel that the business isn't treating her fairly, for the reasons set out above, I don't think the business is behaving unreasonably. In other words, I'm satisfied that the business's actions are reasonable and justified.

Overall, and on balance, I've found that the business has operated reasonably. I appreciate Ms H will be thoroughly unhappy I've reached the same conclusion as the investigator, and I realise my decision isn't what she wants to hear. Whilst I appreciate her deep frustration and anguish, I'm not going to ask the business to do anything.

On the face of the available evidence, and on balance, I'm unable to uphold this complaint and give Ms H what she wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 14 August 2023.

Dara Islam
Ombudsman