DRN-3763939

The complaint

Mr and Mrs M complain that Aviva Life & Pensions UK Limited, referred to as *"Aviva"* or *"the business"*, made an error with their whole of life (WOL) policy resulting in the loss of its qualifying status for tax purposes.

They're unhappy about the £200 compensation offered by the business for the distress and inconvenience caused.

What happened

In June 2022, the business wrote to Mr and Mrs M to explain that its error – in the way that it had administered the policy – led to the policy losing its qualifying status. However, the business confirmed that if a future event occurred – which meant that Mr and Mrs M would be liable to pay tax – it would send them a chargeable event certificate (CEC) and refund the tax due as a result of its error. In the circumstances, there was nothing else that it could do to undo the error, such as setting up a new policy or retrospectively filling out the same forms in order to make the policy qualifying again.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, she said:

- There's no dispute that the business made an error, in that it administered the policy incorrectly. However, the undertaking to cover Mr and Mrs M's tax liability and £200 compensation offered by the business is broadly fair and reasonable.
- Given the HM Revenue and Customs (HMRC) rules, the business is limited in what it can do, in terms of reinstating the qualifying status. So, in the circumstances the redress is broadly fair and reasonable.
- It's right that Mr and Mrs M shouldn't be out of pocket, and that the business should cover any tax liability that might arise from its error, even though at the present time it's not clear what this might be. But it can't make a payment for a loss that hasn't occurred and hasn't done anything wrong by not doing so.
- Although the whole experience has been distressing for Mr and Mrs M, the redress puts them close to the position they would've been in – but for the mistake.

Mr and Mrs M disagreed with the investigator's view and asked for an ombudsman's decision. In short, they maintain that the redress isn't reasonable given the stress it has caused and is likely to cause the survivor. They're still having to live through and fix the business's error. They should never have been expected to deal with a CEC and/or HMRC.

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'm going to uphold this complaint on the basis that the business did something wrong, but the redress offered is fair and reasonable.

On the face of the evidence, and on balance, despite what Mr and Mrs M say, I think the redress offered by the business – in the form of an undertaking to pay any tax arising from its error and compensation for distress and inconvenience (recently paid) – is broadly fair and reasonable.

Before I explain further why this is the case, I think it's important for me to note I very much recognise Mr and Mrs M's strength of feeling about this matter. They have provided submissions to support the complaint, which I've read and considered carefully. However, I hope they 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, it's not what I'm required to do in order to reach a decision in this case. My role is to consider the evidence presented by Mr and Mrs M and the business, and reach what I think is an independent, fair, and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must consider the relevant law, regulation, and best industry practice, but 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 uphold this complaint, in brief, for the following reasons:

- There's no dispute that Mr and Mrs M's policy was set up as a qualifying policy. I note the business concedes that this meant that any gain or profit would usually be free from *"further liability to income tax".*
- The business accepts that it made an error by failing to fill out some forms when it should have and as a consequence Mr and Mrs M lost the qualifying status on their WOL policy which is primarily the basis of my uphold. This means a tax liability will most likely apply when a chargeable event occurs – for example when such a policy matures, is surrendered or the death of a life assured occurs.
- In a letter dated June 2022, I note the business said:
    - *"Your policy includes an Inflation Protection Option (IPO) that allows your benefits and premiums to increase each year.*

      From 6 April 2013 the Government introduced new rules for qualifying policies. Whenever the premium changes on a qualifying policy we need to check to ensure that an annual premium limit of £3,600 is not exceeded. This limit applies to the total premiums paid by any policy beneficiary across all relevant qualifying policies they may hold with any providers.

      This meant that each time your premium increased after this date, to retain the qualifying status, you needed to complete a Qualifying Policy Declaration and return this to us within 3 months of the change of premium.

      We didn't tell you about this or provide you with the relevant declaration to complete. Unfortunately, under the rules this means that your policy has become non qualifying.

      Because this is our error if you need to pay any tax to HMRC in relation to this policy you will need to send us a copy of the HMRC tax demand and a receipt for the payment you have made and we'll refund this amount back to you."

- Because the business accepts liability for its error, the key issue for me to consider is redress, and whether or not its offer is fair and reasonable in the circumstances.
- On the face of the evidence, and on balance, despite what Mr and Mrs M say, in the circumstances I think the redress offered by the business is broadly fair and reasonable.
- I'm aware, that owing to external factors – that are beyond the control of the business – it can't retrospectively fill out the relevant forms in order to reinstate the qualifying status. I note this isn't something that HMRC rules will allow for. I also note that taking out a new policy isn't a viable option either, given the cost implications.
- In the circumstances I think the business's offer to pay any tax liability that arises as a result of its error is fair and reasonable. It broadly places Mr and Mrs M in the position they would've been in had the error not occurred – almost as if they still have a qualifying policy that would've shielded them from such tax liabilities. In other words, the business's undertaking means that they won't have to pay for the business's error, if such a tax liability arises. So, it's arguable that they're effectively in the position they would've been in had the error not occurred in terms of (future) financial loss.
- In the circumstances, I can't say that the £200 compensation isn't reasonable. I note the business noticed the error and brought it to Mr and Mrs M's attention. It also provided a solution for its wrongdoing, albeit it would mean the survivor having to pay the tax liability and then claim from the business. So, in the circumstances, and on balance, notwithstanding what Mr M says about the survivor having to contact HMRC and the business at some point in the future, I think £200 compensation for the distress and inconvenience caused is broadly fair and reasonable.
- I'm mindful of what Mr M says about the (future) hassle sorting all this out, but I can't agree as there's no reason to think it won't just be a straightforward procedure whereby proof of the tax liability is provided to the business which then pays the amount due. In other words, I can't safely say that the process will be difficult rather than straightforward.
- I also note that, other than the £200 compensation, the business isn't obliged to pay anything more because Mr and Mrs M haven't yet suffered a financial loss in terms of tax liability. I can't say that the business has done anything wrong by not paying (upfront) for losses that haven't yet occurred.

I appreciate that Mr and Mrs M will be thoroughly unhappy that I've upheld the complaint but not given them what they want. Furthermore, I realise my decision isn't what they want to hear. Whilst I appreciate their frustration, on balance I can't say that the redress isn't fair and reasonable.

In other words, on the face of the available evidence, and on balance, I'm unable to give them what they want, other than what the business has already offered.

My final decision

For the reasons set out above, I uphold this complaint.

To put things right, as agreed, Aviva Life & Pensions UK Limited should do the following:

- If a tax liability should arise in respect of the WOL policy as a result of its error, upon proof of payment, Aviva Life & Pensions UK Limited should pay this liability.
- Aviva Life & Pensions UK Limited, should pay Mr and Mrs M £200 compensation for the distress and inconvenience caused, if not done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to

accept or reject my decision before 28 October 2023.

Dara Islam
Ombudsman