

Ombudsman's Determination

Applicant	Mr D
Scheme	Multi-Pension Personal Plan (the Plan)
Respondent	Aviva

Outcome

1. I do not uphold Mr D's complaint and no further action is required by Aviva.

Complaint summary

2. The Plan is a pension policy which includes life cover. Mr D is unhappy that an increasing proportion of his monthly contribution into the Plan has gone towards life cover rather than the pension element of the policy. He says it was not disclosed to him how the split between his pension and life cover would work, and an excessive amount has been paid towards life cover.

Background information, including submissions from the parties

3. The Plan was set up in 1986 under the provider Equity & Law. Prior to the Plan being put into effect, Equity & Law sent Mr D a letter saying:

"I confirm that we have the Application and we are presently underwriting the required Term Assurance (the additional death benefits of £175,000) and the waiver of contributions option.

The application will be completed, in due course, and subject to underwriting terms, on the basis of the enclosed Quotation which shows the Society's anticipated growth rate @ 10% per annum."

4. In the attached illustration, the following information was stated:

"Contributions	Monthly
Retirement Benefits	£216.00
Waiver of Contribution	£5.40
<u>Additional Death Benefit</u>	<u>£37.20</u>

	£258.60
<u>Less Income Tax Relief at 29%</u>	<u>£74.99</u>
Net Contribution	£183.61
Investment Contribution	£253.25

The monthly contributions are payable for 35 years 2 months.”

5. Equity & Law was then acquired by Friends Life, which in turn was acquired by Aviva in 2015. Aviva currently administers the Plan.
6. Towards the end of 2018, Mr D complained to Aviva about the cost of his life assurance linked to his pension plan. Aviva responded through a series of emails, at one point providing a spreadsheet of costs (in terms of how much Mr D had paid month on month since 1993 towards his pension and life cover respectively). It also explained that an independent financial advisor (**IFA**) had advised on the sale of the Plan.
7. Mr D replied saying:-
 - Aviva’s response did not address all of the points he had raised, in particular why the illustrations issued by Equity & Law showed a fixed cost for life cover of £37.15 or £37.20.
 - Further, he had asked for life cover to be issued as a separate policy and it had confirmed this had been done.
 - Aviva had said that the life cover and pension policy were linked together for calculating life cover costs, but this was not explained at the time.
 - There was a reference to mortality charges at the time in the pension part of the policy booklet, but this was difficult to follow and it was not clear that the cost quoted was just an estimate.
 - Until last year, there was no information supplied as to the actual costs being incurred so he therefore had no reason to believe that he was paying anything other than £37 a month for life cover.
 - From the spreadsheet of costs provided by Aviva, it seemed that the mortality charges were extremely volatile. In mid-2017 they reached £231 a month but later fell to £174. This did not make sense. Further, these figures were considerably higher than the originally quoted figure of £37.
 - He estimated that the total cost of life cover to date had been in excess of £30k when it should only have been £14k in terms of the premium agreed.

- Aviva had implied that any mis-selling should be taken up with the adviser. The firm involved was no longer in existence and they would likely have said they were guided by the information supplied in the Equity & Law illustrations.
- The basis of the Plan was misrepresented and Aviva should honour the £37 contribution originally cited by making an appropriate adjustment to its value.

8. On 2 January 2019, Aviva responded to the complaint saying:-

- Having investigated the issues, it felt the responsibility to provide a full response to his complaint lay with a different firm. Its records confirmed that Mr D's policy was effected following advice from a financial advisory firm.
- The IFA would be responsible for the advice given at the point of sale. This was due to the fact that it would not be aware of the discussions held with the IFA or the reasons why this policy was chosen and for the length of time selected.
- In these circumstances, any questions or complaints regarding the suitability of the policy or advice received should be pursued directly with the IFA. However, from its records, it appeared that the company that gave the advice had ceased trading. The Financial Conduct Authority Consumer Helpline might be able to offer further information.
- It might also be possible to pursue the matter through the Financial Services Compensation Scheme.

9. Mr D's position is as follows:-

- Aviva had said that any fault in this matter lay with the (now defunct) broker. He disagreed with this contention as his complaint concerned the way in which the policy was operated and originally represented by Aviva/its predecessor.
- The premium for his policy had always been £258.60 a month, and the split, as per the paperwork issued at the time was stated as: £216.00 for the pension element, £5.40 for waiver of premium cover and £37.20 for life assurance cover (£175,000).
- It had recently come to his attention that the true cost of the life assurance cover was variable and had ranged from £20 to as much as £231 per month. The overall monthly premium had remained unchanged so when the life cover cost has been less than £37, slightly more than £216 has been invested for pension benefits. However, when the life cover cost has been more than £37 – which it mostly had been and often the excess cost was quite significant – less than £216 had been invested for pension benefits.

10. Aviva's position remained as previously. It reiterated that the policy was effected following advice from an IFA, and it believed its decision not to uphold the complaint was correct.

11. As part of the Adjudicator's investigation, Aviva was asked for a copy of the Plan's point of sale documentation and any information issued to Mr D when the policy was set up. Aviva replied saying that due to the time that had lapsed, it was unable to find any point of sale documentation other than a copy of the policy booklet, which it provided. On page 7, 'Mortality Factor' is defined as:

"The Mortality Factor is determined from time to time by the Actuary with reference to:

(a) the sex of the Annuitant/Life Assured

(b) the then age or Rated Age (as the case may be) of the Annuitant/Life Assured, and

(c) the A1967/70(5) ultimate mortality tables published by the Institute of Actuaries or such other mortality tables as are from time to time deemed to be appropriate by the Actuary."

12. On page 8, under Calculation of Mortality Charge, it is stated:

"The amount of the Mortality Charge shall be the Mortality Sum Assured, at the time, multiplied by the Rated Mortality Factor, if any, otherwise by the Mortality Factor."

13. On page 16, under Investment Definitions and Provisions, the following is explained:

"The Mortality Charge, if any, shall be made monthly in advance on the Processing Date whilst the Sum Assured under the Personal Life Policy remains in force. The Mortality Charge is made following any Allocation of Units and/or any deduction in respect of the Service Charge on the Processing Date. The Mortality Charge will be made by reducing the number of Units allocated to the Policy by a number equal in value to the amount of that Charge, using the Ruling Bid Price on the date on which the charge is made."

Adjudicator's Opinion

14. Mr D's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-

- Mr D was sold a financial product which in principle set out to build a retirement fund and provide a certain level of life cover. Mr D's overall contribution into the Plan would be split accordingly to buy investment units in the pension part of the Plan, and purchase mortality units in order to fund his life cover.
- Page 1 of the illustration Mr D provided, and the only page he provided, set out that the cost of his death benefit would be in the region of £37 monthly, but he had found out more recently he was paying as much as £231 monthly for this cover. Mr D's surprise and upset that such a high sum has been paid towards this

benefit, and that a lesser amount than expected had been paid towards his pension, was understandable.

- Although the information on how the policy worked could be clearer, Aviva had set out that the Mortality Charge was variable, and that the Mortality Factor itself, which formed part of the calculation of the Mortality charge, was dependent on various factors.
- This information was “difficult to follow” as Mr D had contended and it was not made explicit that the contribution amounts quoted in the illustration could change. However, the information which Equity & Law (now Aviva) had provided on this point sufficiently set out how the Plan operated, so there was no negligent misstatement or omission on its part.
- Although, this was a complex policy which Aviva could have explained better, importantly, an adviser had sold and provided advice on it. It would have been the job of the adviser to explain how the policy would work and how Mr D’s contributions could change.
- Mr D had suggested that his adviser might not have known how the policy operated because they were guided by the information supplied by Equity & Law. However, it would be surprising if the adviser fundamentally misunderstood the mechanics of the policy and in any case, it would not be prudent for a financial adviser to sell a policy to an individual which they did not fully understand.
- The complaint could not be upheld.

15. Mr D did not accept the Adjudicator’s Opinion and made the following further comments:-

- The Adjudicator’s findings still left the question of how the life assurance monthly costs, originally quoted at £37 average per month, had turned out to be more than £80 on average. Had the premiums varied between £20 to £60, approximately £40 on average, this probably would have been acceptable. However, the estimate had proved to be “way out”. Unless there was a reasonable explanation for this, even on the Adjudicator’s analysis, the original illustration was misleading.
- Aviva had said that it did not disclose details of the mortality factors so it was not possible to check the charges levied. There was no explanation of why the charges were so much in excess of the estimate, or why the charges had been so volatile in recent times. Such volatility made no sense yet no explanation was forthcoming, other than to say it was all in accordance with the policy booklet, which incidentally, was not issued until after the policy commenced.
- In terms of page two of the November 1986 illustration (now provided), he wished to add that in respect of the reference to “attached notes” on this and page 1 of the illustration, no notes were received.

- While there may be a case to make against the broker, who for whatever reason did not advise on the detailed operation of the life assurance costs, he relied on the information provided by Equity & Law and this was, at best, misleading. In addition, prior to December 2017, no mention was made of the actual costs being incurred. Indeed in the annual review of the policy document, which was issued 7 November 2015 and 5 November 2016, it gave the annual life assurance cost at £445.80 (£37.15 per month), as did the first annual review dated 15 December 1987, and all others in between. He could not see why it was acceptable that the actual costs were not clearly stated.
 - He also could not see why he was being denied the information which would allow him to check the charges applied. It did not make sense to him that the charges had increased so considerably and were so volatile. What had changed since the estimate was produced? He could accept that life expectancy had increased over time but that should make the cost of life assurance less, not more. Furthermore, the recent monthly costs seemed to be substantially in excess of what might reasonably be charged for the cover provided. Hence, there seemed to be some anomaly in the way the calculations were being undertaken which remained unexplained.
16. The complaint has now been passed to me to consider. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr D for completeness.

Ombudsman's decision

17. I sympathise with Mr D's position, which is that the policy he has taken out to provide him with a pension and life cover, has transpired to cost far more than expected and led him to save less than anticipated towards his pension.
18. Mr D says he was not aware of how the policy would work and that his contribution towards pension and life cover could vary so considerably. He acknowledges that this was an advised sale but says the literature he received at the time should have been clearer in respect of how the figures quoted in his illustration could change.
19. The policy booklet does include information on how the mortality charge can change affecting the allocation of units. I appreciate that such a technical explanation might not have been helpful to Mr D, and he may not have been able to reconcile this information with his illustration, which provided specific information on his contribution. Nonetheless, Aviva did provide adequate information on the Plan's mortality charges, so I make no finding of an administrative failure on Aviva's part.
20. Although I understand Mr D has said that he was led by the information issued to him by Equity & Law, I cannot disregard that this was an advised sale. Therefore, the greater burden is placed on the adviser rather than the product provider.

21. Mr D has said he wishes to have a greater understanding of the background and rationale behind his mortality charges increasing so significantly; he believes there might be an anomaly in how these were calculated. Mr D has suggested that Aviva has not been forthcoming with complete information in regard to this. I make no finding on this point as I am not aware of all the information which Aviva has given to Mr D, but Aviva should endeavour to be as helpful as possible to Mr D in providing the explanation he seeks.
22. I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
24 March 2020