DRN-4373666

The complaint

This complaint is being pursued by the executors of the estate of the late Mr R. The executors are his wife, Mrs R, and her son, who I will call Mr D for ease of use. Mrs R is also a complainant in her own right. She and Mr D are represented at this service by Mrs R's independent financial adviser ('*IFA*').

The IFA says that Aviva Life & Pensions UK Limited has behaved unfairly in relation to the surrender of two investment bonds held jointly by Mrs R and the late Mr R. Specifically, the IFA says that Aviva caused unreasonable delays, misplaced documents and provided misinformation – all of which unduly delayed the surrender of the investments.

What happened

Mrs R and the late Mr R jointly held two unit-linked investment bonds, both of which were later taken over by Aviva. The first bond (policy ending #127) was taken out in 1992. The second bond (policy ending #700) was taken out in 1995. Mrs R's 50% share of 16 segments for the first investment bond were encashed previously in 2012.

On 31 August 2022, the IFA wrote to Aviva on behalf of the executors asking for a valuation and the surrender of both bonds. This was processed by Aviva on 2 September 2022.

Aviva has explained that the surrender requests were dealt with by two separate offices – and this resulted in a notable time difference in resolving the requests and paying the surrender values. Policy #127 was surrendered on 15 November 2022, with payment being made to Mrs R on 21 November 2022.

That same day, Mrs R and Mr D complained through the IFA. Aviva responded on 12 December 2022. It upheld the complaint. It explained that it had suffered a number of postal issues and other email errors sending the information for policy #700 to one of its alternative locations. It otherwise noted that while Mrs R and Mr D had not been financially disadvantaged, the delay for providing the surrender value was unacceptable.

Aviva agreed to pay a total of £250 in compensation for its errors - £150 for failing to process the surrender in a proactive manner and a further £100 for the inconvenience caused.

In the interim, the IFA continued to have ongoing correspondence with Aviva, as the second policy remained unsettled. It was also noted that Mrs R and Mr D did not feel the £250 was sufficient compensation. The IFA also noted that no consideration had been given for the professional time spent chasing matters. Emails were exchanged between the parties throughout December 2022, January 2023 and February 2023.

Thereafter, the IFA referred the complaint to this service. It explained that Aviva's final response letter only dealt with policy #127. The complaint also reiterated how the offer of £250 compensation for distress did not properly account for the upset Mrs R and Mr D had been caused, or the administrative inconvenience caused to the IFA.

The IFA said the resolution sought by Mrs R and Mr D was fivefold:

1. the outstanding policy #700 needed to be surrendered without further delay;
2. any financial loss caused by the delay ought to be refunded to the executors;
3. Aviva ought to supply an acknowledgement of its abject service failings;
4. compensation ought to be paid to Mrs R, for the upset she has been caused;
5. the costs incurred for the professional services of the IFA ought to be reimbursed.

On 9 February 2023, Aviva agreed to pay a further £100 for not requesting a grant of probate in its letter of 30 September 2022. In respect of policy #700, it said that another part of Aviva was still dealing with the surrender and it had asked that area to contact the IFA directly.

Policy #700 was eventually surrendered on 14 March 2023.

After the complaint was referred to this service, Aviva told our investigator it would pay a further £100 in respect of the complaint (and impliedly, relating to policy #127).

An investigator from this service then considered the complaint, and felt it ought to succeed. In summary, she said the IFA on behalf of the executors had been efficient in making and responding to any communications received by Aviva. Contrastingly, Aviva had missed repeated opportunities to provide comprehensive replies.

In the case of bond #127, the investigator noted how Aviva could have provided the surrender value by 30 September 2022, had it acted promptly. However, taking the actual surrender date and comparing the values, the estate of Mr R and Mrs R had not suffered a financial loss – as the later surrender value was higher. She also noted that she felt the total compensation for the delays and inconvenience was appropriate in the circumstances.

However, in her view, Aviva ought to apply the same loss comparison to policy #700. So, she felt the surrender could have been concluded by 30 September 2022 and Aviva ought to undertake the same assessment of the difference in values of the settlement sums – paying any loss to Mrs R and the estate of the late Mr R with interest, if so. To that sum, she felt a further £200 compensation should be awarded to Mrs R. She noted she could not otherwise award compensation to the late Mr R's estate, or to Mr D. Finally, our investigator explained that she could not refund any costs for time or inconvenience caused to Mrs R's IFA.

Aviva made some further brief comments. It explained why the policies had such substantively different timescales for processing; this was since two completely different areas of the Aviva group had processed the surrenders. It did accept that improved processes ought to be in place to avoid discrepancies occurring. It also confirmed it would refer the proposed redress to the relevant department in the alternative office. However, despite multiple requests from our investigator, no further reply was received from Aviva.

The IFA said Mrs R and Mr D didn't have any other comments to make. The complaint was thereafter 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'd like to thank the parties for their patience whilst this matter has been pursued at this service and specifically, whilst it has awaited referral to an ombudsman. Having looked at everything before me, I also believe this complaint should be upheld, for principally the same

reasons put forward by our investigator.

It's important for me to point out that we do not act in the capacity of a regulator. That means our decisions don't ordinarily interfere in how a business may conduct its operations or exercise what may be commercial judgment on the provision of a particular service. That remit falls to the Financial Conduct Authority.

Upon receipt of the surrender request for both bonds, Aviva set out a clear explanation to Mrs R, Mr D and their IFA as to why specific Money Laundering Regulations required it to establish the identity of the executors and why it required certain evidence in order to undertake the surrender of the late Mr R's investment policies. Notwithstanding that this wasn't issued until 30 September 2022, I find that Aviva was reasonably entitled to obtain the evidence it needed to ensure it correctly paid the proceeds of the policy. This was particularly relevant where surrender of the first policy was undertaken on behalf of Mr R's estate, because Mrs R's segments were previously encashed.

Nonetheless, I agree that Aviva has caused an extensive delay in providing the surrender values to the executors, notably with the second policy. I do not need to recount each act in the vast chronology of this complaint, as it is known to the parties. However, it is evident that the IFA on behalf of Mrs R and Mr D has meticulously administered this matter, with updates, correspondence and replies to Aviva being supplied promptly at all times.

Aviva, for its part, made some notable failings including omitting the grant of probate request in September 2022, failing to update its records, overlooking confirmation letters, failing to inform the IFA representing the executors as to the split of the two investments over the different offices and not identifying the cause of continued delays to the settlement.

After the complaint was referred to this service, Aviva has helpfully identified a timeline within which the surrender of both policies on behalf of the estate of Mr R ought to have been completed. It has confirmed how, if the surrender of policy #127 was undertaken correctly, the following would have occurred:

- there would be a five working day turnaround time for surrender forms;
- there would be a three working day turnaround time for surrender payments;
- therefore, as the surrender request was received on 2 September 2022, it should have been issued by 9 September 2022;
- based on the IFA's response on behalf of the executors, Aviva would have received the required certified evidence on 19 September 2022 and actioned this by 20 September 2022 on the next working day;
- there would then have been a further four working days on each occasion for receipt and processing of the grant of probate and the correctly signed forms; and
- taking all of these dates consecutively, there should have been an action date of 30 September 2022 for final settlement of the surrender request.

I agree that, in the scenario where Mrs R's IFA had acted particularly swiftly with all email and postal correspondence including sending certified copies of evidence of identity, the settlement could conceivably have been completed within one month from notification. Had this been so, policy #127 had a surrender value of £39,928.19 – whereas the final settlement paid to the estate of Mr R was £41,643.04. So, I am satisfied no monetary loss occurred.

However, I have seen no objective or justifiable reason as to why the second policy could not have been surrendered and settled using a similar timescale. Aviva has clarified why the delays occurred – that the policy was operated by an entirely different office in an alternative part of the country - but I do not believe that the logistics of office locations or the fact that

both bonds were legacy products later taken over by Aviva is a reasonable justification as to why the bonds couldn't have been similarly surrendered over the same period.

For that reason, I agree with our investigator that Aviva could have surrendered both bonds within the one month timescale it has detailed, using its own accepted business standard turnaround times for the processing of correspondence and the settlement of investment bonds of this nature. I'll therefore explain in the 'putting things right' section of this determination as to how this matter ought to be resolved.

In respect of the upset caused to the parties as a consequence of Aviva's actions, I must be clear that I cannot propose any payment of the upset caused to Mr D directly, nor can I make an award to the IFA. I do not have a free hand to make awards to either of them. I can see that this may be confusing, but our rules do not allow it. I'll explain why that is.

We are bound by the Dispute Resolution ('*DISP*') rules which apply to this service, as set out in the FCA Handbook. An ombudsman cannot avoid the rules or apply discretion to certain rules. Complaints that are made to this service must be pursued by an 'eligible complainant' (for example, a consumer or a micro-enterprise) and those complaints must be about acts or omissions by businesses when carrying out certain 'regulated activities' – in this case, administration of the investments held by the late Mr R for the benefit of himself and Mrs R.

A specific rule (DISP rule 2.7.2 R) allows a third party to bring a complaint on behalf of an eligible complainant to this service, for example from an appointed representative or an executor of an estate for an eligible complainant that has since passed away. That applies here as Mr D is one executor of Mr R's estate and the IFA represents both Mr D and Mrs R. But that doesn't mean that the IFA or Mr D, as representatives, are eligible complainants in their own right.

Though this service can make further awards for the distress a business has caused in relation to a complaint (DISP 3.7.2 R), and whilst a complaint can be made to this service by a representative on behalf of the eligible complainant (or the estate of a complainant that has passed away), that does not confer the right to receive a money award to the representative.

Consequently, I cannot make an award for distress or trouble caused to Mr D as an executor for the late Mr R. Nor can I compensate the IFA for the impact personally experienced in terms of time, cost or disruption; our rules do not permit me to award compensation to a representative in these circumstances.

In very limited circumstances, this service can consider if a complainant - in this case, Mrs R - has borne costs reasonably incurred in respect of the complaint. However, our rules offer guidance (DISP 3.7.10 G) which notes that in most cases complainants should not need to appoint professional advisers in order to bring complaints to us, given we are an informal dispute resolution service. Awards of costs on this basis are therefore possible, but rare.

I do not believe that, given the restrictions on costs awards, I can propose any costs incurred by the IFA ought reasonably to be paid to Mrs R. Any costs (based on time spent, for example) were incurred by the IFA who isn't an eligible complaint, but instead a representative for Mrs R. I've seen no objective evidence to suggest any attributable costs for the time the IFA spent corresponding with Aviva were directly passed on to Mrs R.

I am, however, able to consider the impact of Aviva's actions and inactions on Mrs R as an eligible complainant in her own right, as she is a stated beneficiary for both investment policies. Taking that in the round in relation to policy #700, I agree that a further £200 is a fair proposal for the additional prolonged delay to the settlement of both bonds at what is a difficult time for her.

Overall, that means that Aviva ought to pay (though I note it has made some payment already) £650 in compensation to Mrs R. This is since the impact of these combined mistakes has caused considerable stress, upset and worry as well as notable disruption that has taken five and a half months longer to be fully resolved than it should have.

Putting things right

In the case of policy #127, I believe Aviva's loss comparison has fairly determined that no financial loss occurred for the surrender value of the bond, as paid to the executors of the estate of the late Mr R.

I also understand it has proposed the following distress payments:

- £250 compensation offered on 12 December 2022;
- £100 compensation offered on 9 February 2023; and
- £100 compensation offered on 3 August 2023.

I believe the first two payments were issued to Mrs R by bank transfer. Whether the third payment has been made is unclear, as it was offered by Aviva after the complaint was pursued at this service. However, for the avoidance of doubt, Aviva must pay all three payments to Mrs R, if it has not done so already.

In the case of policy #700, Aviva must pay a further £200 for the additional upset caused to Mrs R by the avoidable delays in paying the policy's surrender value to the executors.

For policy #700, Aviva must also undertake the same loss comparison it calculated for policy #127, by comparing the surrender value paid to the executors of the estate of the late Mr R on 14 March 2023 to the date it should have been settled – accepted by Aviva as 30 September 2022.

If this calculation determines a lower surrender value was paid in March 2023, Aviva must pay that sum to Mrs R and Mr D as executors of the estate of Mr R, along with 8% simple interest to the date of settlement.

If Aviva considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mrs R and Mr D may be able to reclaim the tax paid from HM Revenue and Customs, if applicable.

My final decision

For the reasons explained, I uphold this complaint. I direct Aviva Life & Pensions UK Limited to pay the redress I've detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D and Mrs R on behalf of the estate of the late Mr R to accept or reject my decision before 22 March 2024.

Jo Storey
Ombudsman