DRN-4626182

The complaint

Mr K and Mrs G complain about the lack of communication from Aviva Life & Pensions UK Limited when their life and critical illness policy came to an end. They found they didn't have any cover in place when Mrs G later fell ill and attempted to claim on the policy.

What happened

In June 2014 Mr K and Mrs G took out a life and critical illness policy via Tesco, which was underwritten by Aviva. The policy began on 2 June 2014, with a sum assured of £150,000, a five-year term and premiums of just over £50 per month. The policy finished in June 2019 and at that time, no letters were sent by either Tesco or Aviva to remind Mr K and Mrs G that their cover was coming to an end. Mrs G has explained the policy was taken out to cover her mortgage, which had a longer term of 25 years.

Unfortunately, Mrs G was diagnosed with cancer in November 2019. She got in touch with Aviva to claim on the critical illness cover and discovered the policy had come to an end. She made a complaint about the fact Aviva hadn't sent her a letter to remind her that the policy was ending. She explained that shortly after the policy began, Mr K rang either Aviva or Tesco to discuss the policy term. He remembers being advised that the policy term couldn't be changed and that they would be sent a reminder letter at the end of the term, so they could simply take out new cover at that time.

Aviva didn't uphold the complaint, saying it wasn't a regulatory requirement for them to send reminder letters. They said that for any policies taken out via a strategic partner, of which Tesco was one, a decision had been taken to not send those customers reminder letters at the end of the term of the policy. They said the policy documents from 2014 clearly set out the term and Mr K and Mrs G ought to have noticed that the premiums had stopped being taken.

Mr K and Mrs G remained unhappy with this reply, particularly regarding the lack of a reminder letter, so they brought their complaint to our service. An investigator at our service looked into the complaint and didn't uphold it. He found that there was no recording of the call Mr K had so he couldn't be sure of what was said, and that Aviva didn't have a duty to send reminder letters.

Mr K and Mrs G also raised a complaint about the sale of the policy, which for clarity is not the subject of this decision.

As they remained unhappy with the overall outcome, Mr G and Mrs K asked for the complaint to be passed to an ombudsman for a decision, and it was passed to me. I asked Aviva to provide further information about the fact they didn't send reminder letters to customers who applied via strategic partners like Tesco, in light of the following information:

- Mrs G has told us that over the years she was sent marketing information by Aviva, so they were in the habit of contacting her.
- They sent reminder letters to customers who have applied directly, but not those customers who have applied via a strategic partner.

- Once the partnership with Tesco ended in 2017, Aviva had the opportunity to review or change this policy at that time.
- In 2016 the Financial Conduct Authority ("FCA") carried out a thematic review titled "Fair treatment of long-standing customers in the life insurance sector TR 16/2". In part this focused on the communication needs of long-term customers, and the principles set out in that review were, in my opinion, applicable to this scenario.

In summary Aviva said that marketing information is not the same as policy information. They explained that by the end of 2019 they had made the decision to start sending reminder letters all customers, but they maintained that they were not under a regulatory obligation to send a reminder letter. They said the thematic review didn't apply to this type of policy.

Lastly, they said they weren't convinced Mrs G would have been accepted for further cover in 2019, depending on her health. I asked Mrs G for details around this, and she explained her symptoms didn't begin until August 2019, so she feels her health wouldn't have prevented her from getting cover in May/June 2019. I shared this with Aviva, but they maintained that the case shouldn't be upheld.

I issued a provisional decision, in which I said:

"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 begin by thanking the parties for their cooperation and patience while I've requested and reviewed further information for this complaint.

I consider that my role here is to make a finding as to whether Aviva are wholly or predominantly responsible for Mr K and Mrs G not having cover in place when they came to make a claim. So, I've considered all the factors that have caused that eventuality. This means that I've looked at all of the information Mr K and Mrs G had about the policy, rather than just focusing on what happened in 2019, as this goes to Mr K and Mrs G's overall knowledge of the policy.

So, I started by looking at the information Mr K and Mrs G were sent at the time the policy was sold and having done so, I'm satisfied the term is clearly set out in that paperwork. The policy was sold on an execution only basis – which means Aviva had no initial or ongoing responsibility to ensure Mr K and Mrs G had suitable cover in place for their protection needs.

Mr K and Mrs G admit they were aware the term was five years, as they remember Mr K calling either Tesco of Aviva to discuss this, shortly after the policy began. Unfortunately, Aviva has no record of that call taking place. Mr K and Mrs G haven't been able to provide a call history showing the number called. If Mr K called the number on the paperwork from Aviva, then he likely spoke to Aviva rather than Tesco – Aviva has explained the phone numbers on the policy documents would have routed through to them. Because there's no call recording or notes from the time, it's very difficult to know exactly what the call handler at Aviva said to Mr K about what they'd be able to do with the policy.

I think it's unlikely the call handler would have gone as far as saying Mr K and Mrs G's only option was to remain with this policy and take out a new one at the end. This is because the policy was voluntary – they could have cancelled it at any time without penalty and taken out a new one. It's possible that keeping the existing policy and taking a new one in five years was presented as an option – but that doesn't mean it was presented as the only, or best, option.

By choosing to keep the policy in place and not changing the policy in 2014, Mr K and Mrs G were taking several risks:

- *that at the end of the five-year term, they'd still be insurable – anything could have happened in the intervening years to prevent them from being eligible for cover.*
- *that they would be able to afford the insurance at that time – it is generally the position that as policyholders age, the more expensive life and critical illness policies become. If either of their medical or lifestyle circumstances had changed, then even if eligible for cover this could have caused it to be much more expensive.*
- *that what they had been told about Aviva's processes in terms of sending a reminder letter wouldn't change in the interim.*

That all being said, I do think Aviva ought to have sent a reminder letter. Firstly, Aviva were treating some of their term assurance customers differently from others, purely based on the method in which they'd bought their policies. By sending these letters to some customers, Aviva must accept that they serve a purpose – and not just a commercial one to boost sales. It's not unusual that long-term customers lose sight of the exact details of the product they hold, given the time since the product was taken out, and so the letters act as a reminder to review their protection needs. I haven't seen anything to persuade me that Aviva acted reasonably in only sending these letters to some customers and not others.

Secondly, I think Aviva should have been carefully considering its customers' communication needs more generally (not just comparing groups of customers with each other). There was no rule that specifically stated in 2019 that reminder letters had to be sent and Aviva is correct in saying the FCA's Thematic Review didn't directly apply to term assurance policies, as it was directed toward life policies with underlying investments. However, throughout the Review the FCA explains that these aren't new ideas – they rely on the general Principles as set out in the PRIN section of the FCA's Handbook, which do apply to term assurance policies. So, while the review itself was focused on other products, I consider it reasonable to apply its findings regarding how the Principles should be interpreted to other long-term products, like term assurance.

One of the aims of the thematic review was to ensure that customers of closed-book products shouldn't be treated any differently to customers of products that were still being marketed and sold. Mr K and Mrs G's policy falls into this category of a closed-book policy. Another aim of the review was to ensure firms were sufficiently considering the information needs of their customers.

So, I'm satisfied that Aviva ought to have sent Mr K and Mrs G a letter in 2019, particularly because they did send these to other term assurance customers. I've then gone on to consider what would have happened if a letter was sent. Mr K and Mrs G have maintained throughout that the non-receipt of the reminder letter was the only reason they didn't take out new cover. However, I must be mindful of looking at this complaint without the benefit of hindsight – so I have to put to one side the fact that Mrs G later received a diagnosis for a very serious illness.

In order for Mrs G to make a successful claim on any new policy, it would have been necessary that any application was accepted prior to her first symptoms, which were in August 2019. I've considered the following when thinking about the likelihood of the application being completed by that time:

- *Mr K and Mrs G may not have acted on the reminder right away, or may have been mid-application by the time she began experiencing symptoms. Unlike car insurance or buildings insurance, it's not a legal requirement to have life and critical illness*

cover in place – so, without knowing Mrs G was going to be unwell, they may not have acted with urgency in finding new cover.

- *The way Mr K and Mrs G answered the health and lifestyle questions in the application may have caused an insurer to require full medical underwriting to take place prior to the application being accepted. This can take months sometimes, depending on the speed of replies from third parties, like doctors.*
- *Though it is usually only done on a sample size of applications, insurers may randomly choose applications to undergo medical underwriting, even where there are no issues highlighted on the application form itself – which is a matter of their choosing.*
- *Mr K and Mrs G's circumstances were likely different in 2019 compared to 2014, so they may have decided to take advice, which can take time. They may have chosen a different policy or sum assured.*
- *It's possible that a like for like policy may have been over Mr K and Mrs G's budget and they may have needed to shop around more for cover – again this can take time.*

So, there are several reasons that may have prevented or delayed an application being made and accepted.

Having considered everything, while I do think Aviva should have sent the reminder letter, I think there are several other factors that played a bigger part in Mr K and Mrs G not having cover in place. So, I'm not persuaded that Aviva's failing is the predominant cause of Mr K and Mrs G not having cover when they came to make a claim in 2019.

I want to emphasise that I don't take this decision lightly and I have a great deal of sympathy for the situation Mrs G and Mr K are in – it's clearly not what they'd hoped to happen. I understand that they didn't intend to have cover for only a five-year term. It's simply that I don't think Aviva has done enough wrong, to reasonably conclude they are the cause of the issue here."

Replies to my provisional decision

Mrs G replied and said, in summary:

- She was confused as to how we could reach the conclusion that Aviva should have sent a letter, but not hold them accountable for the consequences of not sending it.
- She understands there are a lot of 'what ifs' when considering if the new policy would have been taken out by the time she first started having symptoms. But she felt that they were unlikely.
- As a teenager, she experienced close family members being very unwell and having the benefit of a lump sum from a critical illness policy. This instilled an appreciation for how important this type of cover is, so if she had received the reminder letter, she would have acted on it very quickly.
- At the time the policy ended, her health was the same as when she'd taken the policy out. If Aviva had sent a letter even a month before the policy ended, she would have had around five months to arrange new cover before getting symptoms – which would have been plenty of time to allow for the variables in applications that I had set out.
- She explained that following the phone call just after the policy began, continuing with the five-year policy seemed like the simplest and best option, as they were assured they'd receive a reminder letter.
- That Aviva changed their policy on reminder letters later in 2019, shows they admitted their previous practices must have been wrong.

- She understood that the decision was reached due to the level of uncertainty as to what would have happened – but she felt the one certainty in the case - namely the fact Aviva ought to have sent the letter and they did not – ought to outweigh the uncertain elements.

Aviva replied and said that they had nothing further to add that hasn't previously been said. They maintained that the process was within the guidelines that were set at the time.

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 Mrs G for her 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.

Having reconsidered everything, I have to say my decision remains the same as set out previously. I appreciate all of Mrs G's comments – but I want to reiterate what I consider my role to be here. To consider any liability for Mr K and Mrs G's inability to make a critical illness claim, I must make a finding as to whether Aviva are wholly or predominantly responsible for Mr K and Mrs G not having cover in place when they came to make a claim.

Though I agree Aviva could have done more, I'm not persuaded that they were the predominant reason for cover not being in place. I understand Mrs G's frustration that the outcome is based on many uncertain elements. Where something is uncertain, my role is to make a finding as to what is more likely than not to have happened – so more than 50% likelihood. Sometimes this can be a particularly balanced and difficult decision.

Ultimately, I can't escape the fact that the policy was taken out by Mr K and Mrs G without advice from Aviva, or Tesco. I appreciate Mrs G has said that remaining with the five-year policy seemed the simplest way forward in 2014. However, that involved the risk of relying on Aviva's process being the same after five years, and that they'd definitely receive any letter sent.

Overall, I'm satisfied that tips the balance of responsibility onto the policyholders to ensure they have the right policy in place for their needs and it outweighs the responsibility borne by Aviva here in sending the reminder letter.

I know this outcome will be disappointing for Mrs G and Mr K. However, on balance, I don't think it would be fair and reasonable to say Aviva is the predominant cause of Mrs G and Mr K not being aware that their cover had finished before they needed to pursue a claim.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr K to accept or reject my decision before 20 March 2024.

Katie Haywood
Ombudsman