

The complaint

Mr H complains that Aviva Life & Pensions UK Limited ('Aviva') has incorrectly calculated his investment policy surrender value and believes he is owed around £600 extra.

What happened

I issued my provisional decision of July 2024 in which I said that I was likely to conclude that Aviva should pay Mr H £39.11 as it had already offered to do, but there was nothing more than this it needed to do to put things right. A copy of my provisional decision setting out the background to the complaint and my provisional findings is included below and forms part of this final decision.

Aviva didn't respond to my provisional decision.

Mr H replied. He repeated some of what he'd already told us before, so I won't set out everything here. I consider a summary of key points Mr H made were as follows:

- The terms and conditions existing at the time of the transfer would continue. Any reference to any other than those stated in the policy endorsement should be struck out as irrelevant.
- It is beyond dispute that he deposited money with Aviva for a guaranteed 3% uplift yearly. Aviva guaranteed a 3% uplift per year.
- All references by Aviva to a reduction of value is false and misleading and should be discounted.
- I correctly said there is no mention of allowing the equivalent of 3% for a surrender between policy years, but also there is no mention of NOT applying the same terms as for full years and consequently on the balance of probabilities the guaranteed 3% was intended to cover all eventualities otherwise they would not have used terms such as guaranteed. Mr H's contention is that when is a guarantee not a guarantee?
- I acknowledged that Mr H's deposit was invested in Aviva Life Deposit option linked to the money market. Aviva would have any interest that would be paid on a daily basis, so he asks why he's being disadvantaged as in effect his interest accrues on a daily basis also but is paid later which is what the endorsement allows.
- When Aviva acquired the previous product provide, the independent expert said that clients would not be materially adversely impacted.
- He's disappointed that there seems to be a bias towards Aviva who had not been factually accurate.

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, while I have read and considered everything Mr H has said in response to my provisional decision, he's not provided me with anything new which gives me cause to change my mind. So, I've decided to reach the same overall conclusion and for the same reasons as set out in my provisional decision. And there's not much more I feel I can usefully

add.

As I said in my provisional decision, Mr H's policy did provide for a guaranteed minimum gross annual return of 3%. But the policy conditions said that Aviva would calculate the policy's growth and if necessary apply the minimum 3% guaranteed return on each policy maturity anniversary – i.e. the 25 August each year. So, the guarantee applied on the policy's maturity anniversary. There is nothing in the policy endorsement letter, which says upon surrender between anniversary dates, Aviva would apply the 3% guaranteed annual return on a pro-rata basis. Mr H says that because there is no mention of not applying the same terms as for full years, on the balance of probabilities the guaranteed 3% was intended to cover all eventualities. But I disagree. In my view the terms were clear that the guarantee applied on the anniversary date when Aviva calculated the annual growth. For this reason, it is not fair that Aviva should calculate the 3% return guarantee on a pro-rata basis.

I understand that Mr H feels differently to me about his complaint. And I'm sorry that he feels that there has been a bias towards Aviva. I can assure him that's not the case. But for the reasons I set out in my provisional decision, I don't consider Aviva has wrongly applied/interpreted the policy terms and so calculated Mr Hs' policy surrender value incorrectly. I don't think Mr H is owed what he says he is owed.

But as I said in my provisional decision, Aviva has offered to pay Mr H £39.11 to reflect late payment interest calculated at 8% simple, which in the circumstances I think is fair.

Putting things right

Aviva should pay Mr H £39.11 as it has offered to do.

My final decision

My final decision is that to settle this complaint Aviva Life & Pensions Limited should pay Mr H £39.11 as it has offered to do. There is nothing more it needs to do to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 September 2024.

Copy of provisional decision

The complaint

Mr H complains that Aviva Life & Pensions UK Limited ('Aviva') has incorrectly calculated his investment policy surrender value and believes he is owed around £600 extra.

What happened

The following is summary of the key facts and background to this complaint.

In the early 1970's, Mr H took out an investment policy with a business now part of Aviva. Mr H paid a monthly premium for the policy until its maturity on 25 August 2009. The policy had a number of options at maturity – Mr H chose the Interest income option. The original policy document described this as leaving the matured monies on deposit for up to 20 years, subject to withdrawal on request, where interest would be paid annually.

When the policy matured it had a guaranteed minimum value of just over £26,000. At the maturity date Mr H was sent confirmation of the deposit option he'd selected and a policy endorsement letter, which said that: 'On 25 August 2010 and each anniversary thereafter we will calculate the growth on the invested funds. A minimum interest of 3% gross per annum will be added on each anniversary.'

On 18 April 2023, following his surrender quotation request he received a cash-in quotation letter from Aviva which said his policy's current value was £38,348.74. It said the amount was not guaranteed and was subject to change up or down depending on investment performance.

On 10 May 2023, Mr H sent Aviva a full surrender request instruction for his policy. The next day Aviva asked Mr H for some additional information, which he then provided. A system error meant Aviva did not process Mr H's claim within its usual timeframe. Following two chaser phone calls from Mr H, it issued payment to him on 24 May 2023 for an amount of £38,445.94 inclusive of late payment interest of £78.62.

Following receipt of the funds, Mr H complained to Aviva about the final value paid because he didn't think it had been calculated correctly as the amount was lower than he expected.

On 25 May 2023, Aviva issued its final response to the complaint. In summary it said the value wasn't guaranteed because the policy was unit linked. It said it was satisfied the amount paid was correct. But it apologised for the trouble caused in not settling the claim when it should have. It said it had already paid late payment interest to account for the delay and it would also credit his bank account with £25 in recognition of the inconvenience caused.

Dissatisfied with its response, Mr H brought his complaint to us. He said when the policy matured, he chose the 'Third Option' of leaving it on deposit. He said this guaranteed interest of 3% added each year that it remained invested. He said Aviva had correctly calculated the policy for 'The whole years' and arrived at £38,200.02. But he said it had incorrectly calculated the 'part year' – the days from the anniversary date to the surrender date. He said the interest for a complete year would be £1146, so for the part-year it should be £810.49. He said this gives a total figure of £39,010.05, which is around £600 short of what he received.

Aviva said it was satisfied Mr H had received the correct amount and it couldn't see where the alleged missing £600 comes from. But it said it would recalculate the late payment interest using 8% instead of the rate of 1% above Bank of England base rate it had used, so Mr H was due a further £39.11.

One of our Investigators looked at this and they said they hadn't seen anything to show that Aviva had done something wrong. They said they thought Aviva had calculated Mr H's

surrender value in the expected way and that it had proved he received what he should have. As a result they said there was nothing Aviva had to do.

Mr H disagreed. He asked to see what evidence Aviva had provided, which the Investigator said showed the surrender value had been calculated correctly. He said he'd asked for this on previous occasions.

Aviva said there was no detailed calculation to provide – it was done on its system and this isn't something it would share. It said interest is added annually on Mr H's policy, but it had added pro-rata interest for the part-year, which wasn't something the policy document supported.

Mr H maintained Aviva was at fault. He said the policy had a fixed interest of 3%. And said, while the original policy was silent about what happens if cancellation occurs mid-year, Consumer Duty and TCF regulations mean he should've been told to defer cashing in if interest was to be otherwise foregone. Mr H repeated the calculations he set out in his original complaint submission and said that, ultimately the policy endorsement confirms the annual interest rate is 3% which had not been correctly applied for the part-year. He said he was concerned this had not been properly addressed to date.

Because the Investigator wasn't persuaded to change their opinion, the complaint was referred to me for a decision.

What I've provisionally 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've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having done so, my provisional decision is that Aviva should pay Mr H additional late payment interest of £39.11 as it had offered to do, but there is nothing more than this it needs to do to put things right. I'll explain why.

It is not in dispute that following the maturity of Mr H's investment policy in 2009, it has been subject to a guaranteed return or minimum interest of 3% gross per year. And for the 'whole years' – i.e. from 25 August 2010 to 25 August 2022, Mr H is in agreement with Aviva's calculation that his policy was valued at £38,200.03 at this point. But it is the application of the part-year's return – i.e. from the policy's anniversary date to the surrender date which is disputed. I aim to clarify how Mr H's policy had been administered since maturity, which in turn will show that Aviva has not acted unfairly or unreasonably in its calculation of Mr H's policy surrender value.

While Mr H's original policy document described the maturity option Mr H chose as holding his monies on deposit, it has been administered as a policy, which is what the maturity letter of 2009 said. The monies are after all held with a life assurer and not a bank, so I think it's reasonable they have been administered this way. The policy has also remained unit linked, and it appears that since maturity it has been invested in a money market / cash instrument-based fund latterly called the Aviva Life Deposit Option fund. At each maturity anniversary date (25 August) Aviva has calculated the growth on Mr H's invested funds. And if the growth achieved was less than the 3% gross minimum guarantee Mr H was promised, Aviva

added the necessary units to give an overall policy value equivalent to a 3% gross annual return or interest rate. If of course the return on the fund was greater than 3% during any year, Mr H would receive the higher return (albeit this seems not to have been the case.)

It appears from what Mr H has said that he didn't fully appreciate his policy was being administered this way. But given what I have described above that there was no downside to the way the policy was administered – Mr H was guaranteed a minimum of 3% gross annual return but the potential existed for a greater return subject to the performance of the underlying cash-based fund – I'm satisfied he's not lost out as a result.

Mr H's policy endorsement from 2009 was in my view clear that the relevant date Aviva would calculate the policy's growth and if necessary apply the minimum 3% return was on each policy maturity anniversary – i.e. 25 August. There is nothing in the policy endorsement letter which says upon surrender between anniversary dates, Aviva would apply the 3% guaranteed annual return on a pro-rata basis. And there is nothing to this effect in the policy document either.

So, given Mr H surrendered or cashed-in his policy in May 2023, I don't think it is fair and reasonable to expect Aviva to calculate Mr H's policy surrender value by applying the 3% guaranteed return on a pro-rata basis between 25 August 2022 and 10 May 2023. And while during the course of this complaint Aviva said it had applied pro-rata interest to Mr H's surrender value, this was an error on its part.

Mr H's surrender value was calculated on 10 May 2023 by multiplying the number of units cashed in (18588.82) by the bid price of the fund on 10 May 2023 (206.40), which resulted in a value of £38,367.32. And this is the amount Mr H was paid plus the additional late payment interest amount. In the circumstances, I'm satisfied this was the correct way to calculate Mr H's surrender value.

When Mr H enquired about surrendering his policy, he received a cash-in quotation pack. And this said the values weren't guaranteed. It said: 'The full cash-in value quoted above is not guaranteed. If you do cash in your policy, the amount you receive could be higher or lower than this depending on how your investment performs in the meantime. The actual value that would be paid will be based on the next published price after we have received your cash-in form and any other required items.'

Given Mr H went ahead and gave Aviva a surrender instruction by returning the required paperwork in the cash-in quotation pack, it seems reasonable to conclude Mr H was happy to proceed with a surrender based on the valuation and information he received. I'm mindful too that the cash in letter included important information including a recommendation that Mr H speak to a financial adviser before cashing his policy in. I can see Aviva also included an information leaflet which gave more information about his options. Mr H has referred to certain regulations that he says mean Aviva should have told him he might forego interest if he surrendered the policy at this time and that he should defer surrender. But Mr H's reference to Consumer Duty isn't a relevant consideration because the event in question pre-dates this taking effect. And I'm not persuaded Aviva fairly and reasonably needed to provide any more detailed information than it did in the surrender pack.

Importantly in my view it recommended Mr H should seek financial advice before surrendering the policy. In the circumstances I don't think it is reasonable to expect Aviva to have provided the kind of advice Mr H suggests it should have done.

So, I'm not persuaded Aviva has done anything wrong in the way it calculated Mr H's investment policy surrender value. For this reason I don't make any award here.

But I can see that Aviva has offered to pay additional late payment interest at a rate of 8% a year rather than the Bank of England base rate plus 1% it used when it paid Mr H his delayed surrender proceeds. In my view this offer is fair – this is rate of interest I would typically award in circumstances such as this to fairly reflect the loss of opportunity on the proceeds. So, Aviva should pay Mr H the additional sum of £39.11.

My provisional decision

I've provisionally decided that Aviva Life & Pensions Limited should pay Mr H £39.11 as it has offered to do, but I don't think it has incorrectly calculated his surrender value. So, it doesn't need to do anything more than this to put things right.

Paul Featherstone

Ombudsman