

## The complaint

Mr G's complaint against Aviva Life & Pensions UK Limited (Aviva) relates to the amount of special bonus awarded in 2015 and he's also unhappy with the lack of information about 2020 special bonus.

## What happened

Mr G's pension was originally invested with a provider who was taken over by another business in 2010. This business was later acquired by Aviva. Mr G's funds are invested in a with-profits fund. This plan provides that a special bonus be calculated every five years. Mr G is concerned about the level of special bonuses awarded and believes he has been financially disadvantaged by the switch from the original provider to Aviva.

In August 2016 Mr G raised a complaint about the level of service he received in respect of his attempt to get information about the special bonus that is applied every five years. A final response letter was issued on 22 February 2017, upholding his complaint. The final response letter also said:

*I have requested from our servicing team that confirmation be issue detailing when and how much the special bonuses have been applied to this policy. This should follow shortly under separate cover.*

Sometime following this, Mr G was told that no special bonus was declared for 2015. Aviva said Mr G was provided with an explanation why this was the case. Unhappy with this, Mr G referred his complaint about the special bonuses to this service in 2017.

In October 2020, Mr G wrote to Aviva requesting information about the special bonus that was due at the end of the year. He said he was "not prepared to accept any delays whatsoever this time" and to that end he asked that Aviva provide him with a timetable. Specifically, Mr G asked when the calculations were started, when they were due to be completed, when the bonuses would be applied to his policy and when would he receive notification of the bonus and confirmation that it would had been applied.

Aviva responded by letter dated 17 December 2020. Mr G wasn't happy with this response and so made a formal complaint to Aviva on 14 January 2021. In his complaint, Mr G once again raised this issue of the timetable for the calculation and application of the 2020 special bonus. He also said "in view of your mal-administration of this policy, I am no longer prepared to accept that there was no special bonus due in 2015, and therefore require you to provide me with the calculation and evidence of that statement."

Aviva issued its final response letter dated 17 February 2021. It said, in relevant part:

*I can confirm that the five-yearly valuation of assets can only begin at the end of that period which was 31 December 2020. Therefore, whilst that process is underway, it takes several months before we are in a position to disclose the outcome, unfortunately we are unable to comment on bonuses before they are formally declared.*

*The decision not to award a special bonus in 2015 was taken following consideration of bonuses issued previously, and in view of final bonus rates which were (and currently remain) payable in addition.*

The investigator upheld Mr G's complaint because he thought not being told if a special bonus was being declared in 2020 was upsetting and frustrating for Mr G. He said:

*The role of the Financial Ombudsman Service isn't to punish or fine businesses for making mistakes as we aren't the regulator. Our role is to resolve consumer's complaints and ensure they're not left in a worse position than they would have been in had business not made a mistake. By not telling Mr [G] about the final value of his pension, Aviva caused him to suffer frustration and upset over a sustained period, as well as distress because of the fact he'd complained about this issue before. Because of this I think Aviva should pay Mr [G] £300 compensation.*

Aviva agreed to provide Mr G with this compensation. However, Mr G remained dissatisfied, so his complaint has been referred to me for a decision.

### **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 agree that this complaint should be upheld in part.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

I think it is also useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the industry regulator, the Financial Conduct Authority (FCA). Instead, this service looks to resolve individual complaints between a consumer and a business. In order to uphold a complaint I would need to find that something has gone wrong and that a consumer has lost out as a result. I would then ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been in if the problem hadn't occurred.

Having carefully considered the points Mr G has made regarding Aviva's failure to timely let him know about the special bonus for 2020, I agree with the investigator and for broadly the same reasons. Aviva did not provide timely responses to Mr G's questions and Mr G experienced trouble and upset as a result of this servicing failing. Taking into account everything Mr G has said, I consider £300 fair compensation for the non-financial loss Mr G has experienced in these circumstances.

I understand of course that Mr G is primarily concerned that his fund has not received the five-year special bonus in 2015 or 2020. The investigator explained that these are not complaint points that this service can consider at this time. He said this is because Mr G's complaint about the lack of a 2020 special bonus is a new complaint point that arose after

the current complaint was initiated. He explained if Mr G wishes to pursue this issue he may do so as a separate complaint. I agree. At the time Mr G referred his current complaint to this service, the 2020 special bonus had not yet been declared, so he could not have already complained to the business about this. Aviva is entitled to an opportunity to respond to this complaint before this service can get involved.

But the investigator also thought we couldn't consider the complaint about the 2015 special bonus because it had been made to us more than six months after Aviva's final response was issued and therefore was too late. But I can see that Mr G brought a complaint to this service in 2017 concerning the service he received and the lack of a special bonus in 2015. He was provided with an answer, which it seems he accepted at the time. Therefore, this is not an issue I am able to consider again.

I understand that Mr G is unhappy with Aviva and believes it has poorly administered its policy. As a result he wants to see the calculations and evidence to support that no bonus was due in 2015.

However, the level of bonuses declared by Aviva on its with-profits fund is the result of a commercial decision taken by Aviva acting on the advice of its actuaries which impacts all policyholders invested in the with-profits fund. As a result, it is not within the remit of this service.

But I think it worth explaining a bit about with-profits fund and how they are regulated. With-profits funds have historically attracted criticism for their complexity and perceived lack of transparency – it can be very difficult for policyholders to understand often complex and lengthy documentation and to be satisfied that they are receiving their proper entitlement under the terms and conditions of the particular product. But those difficulties do not necessarily mean that the provider of the with-profits fund has done something wrong or is not acting in accordance with its regulatory obligations.

The industry regulator, the FCA, recognises that with-profits fund providers have a considerable amount of discretion about how they operate their with-profits funds. So the regulator made providers accountable for the way in which these funds are managed.

The regulator's Principle 6 requires that regulated firms “...*must pay due regard to the interests of its customers and treat them fairly*”. Furthermore, the Conduct of Business Sourcebook (COBS), and specifically COBS 20, contains specific rules and guidance for businesses on the operation of their with-profits funds.

COBS 20.2.1 states:

*(1) With- profits business, by virtue of its nature and the extent of discretion applied by firms in its operation, involves numerous potential conflicts of interest that might give rise to the unfair treatment of policyholders.*

And COBS 20.2.3 states:

*A firm must have good reason to believe that its pay-outs on individual with-profits policies are fair.*

Aviva is accountable to the regulator for the way in which it operates its with-profits fund and the regulator monitors the management of with-profits funds. Businesses are required to appoint a with-profits actuary and the regulator provides rules and guidance on their duties. An independent with-profits committee is also required – its remit is to protect the interests of

the with-profits policyholders and to ensure that they are treated fairly. I am not aware of the regulator having any concerns about the operation of this with-profits fund at issue here.

The amount of bonus paid, if any, is determined by Aviva's investment objective, consistent with its regulatory obligations, to allocate bonus amounts as fairly as possible to all its investors in its with-profits fund with the aim of providing a competitive return at the end of the term.

Bonus rates take into account various factors; these include not just current or recent investment performance but also how Aviva expect the fund to perform in the future, as well as the fund's liabilities in respect of the guaranteed benefits applicable to all plans. For all of these reasons I'm unable to uphold Mr G's complaint about the 2015 special bonus. Nor can I direct Aviva to disclose its calculations to Mr G as this could involve revealing commercially sensitive information and I don't consider that fair or reasonable. If Mr G has concerns about the management of the with-profits fund he can approach the regulator directly.

### **Putting things right**

In light of Aviva's service failings as explained above, and as detailed by our investigator, I consider £300 fair compensation for the trouble and upset caused in the circumstances of this complaint.

### **My final decision**

I uphold this complaint in part. My decision is that Aviva Life & Pensions UK Limited should pay Mr G £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 August 2022.

Jennifer Wood  
**Ombudsman**