

## The complaint

Mr D complains about the basis on which Aviva Life & Pensions UK Limited (Aviva) have calculated the value of his deferred annuity when it was transferred following the winding up of his defined benefit occupational pension scheme (OPS). He says that Aviva has replaced the use of the Retail Price Index (RPI) with the Consumer Price Index (CPI) to revalue the plan annually – based on The Pensions Act (PA) of 2011. But he thinks that Aviva is in breach of its original contract with him and shouldn't have altered the basis of the revaluation.

## What happened

Mr D had been a member of a defined benefit OPS until it wound up. Thereafter the scheme was "bulk transferred" to Aviva who then set up individual deferred annuity policies for the members so that the guarantees from the OPS were preserved.

A policy schedule issued to Mr D confirmed that his deferred annuity plan started on 7 December 2007 – with a single premium of £11,282.33, and would be payable (mature) on 18 March 2022.

From 2016 onwards Mr D questioned some of the pension figures he was receiving annually. As a result Aviva uncovered various errors in its manual calculations and paid Mr D a total of £1,100 compensation for the distress and inconvenience this caused. But these errors caused Mr D to question whether Aviva had correctly revalued his pension – especially as he checked the figures himself using an online calculator. Mr D thought that either Aviva wasn't revaluing his plan in line with RPI as it should have done and was using CPI or, if it had used RPI, then it had made an error in its calculation.

Aviva said it had revalued the pension in line with the Social Security Act 1985 (SSA85). It said this was in line with the contractual terms – albeit the wording was slightly different - and was based on published rates which it had to use. So it said it had revalued Mr D's pension plan in line with how it was legally obliged to.

But Mr D didn't accept this explanation and thought the pension should be uplifted by "*the lower of 5% and the increase in RPI for the year.*" He also wanted further compensation for the considerable distress and inconvenience he'd suffered, so he brought his complaint to us where one of the investigators looked into the matter.

He said the complaint should be upheld. After extensive research he found that the UK government didn't create a statutory override that meant Aviva could alter its agreed terms, where RPI had been set out as a revaluation measure. He also thought that the whole issue had caused significant distress and upset to Mr D.

So he said Aviva should work out whether there was any shortfall from using CPI instead of RPI when it revalued Mr D's pension and pay it into his pension as well as paying him £800 compensation.

Mr D accepted the outcome of the assessment, but he felt that, as he had spent around 210 hours trying to resolve the matter – without a reasonable explanation from Aviva during that time – the compensation for the loss of his time should be more in line with an hourly rate of around £50. He asked for the level of compensation awarded to be reconsidered.

Aviva said it had acted correctly and didn't agree with the request to revalue using RPI. It made the following points in response:

- Mr D's original complaint was that his pension income – in excess of any guaranteed minimum pension (GMP), should be revalued by RPI or 5% whichever was the lowest – so at least 5%.
- It had already explained what information it used for the revaluation and why.
- It explained how RPI is calculated and that this was the rate it was required to use according to legislation – which was the SSA85. This publishes a higher and lower rate.
- The rate it had used to revalue Mr D's policy had been the RPI. But in any case, the figures had been the same for RPI and CPI since the change after the PA in 2011. It had checked the rate used for the current year and confirmed it was correct.
- So it didn't think it had done anything wrong and couldn't therefore carry out the investigator's recommendation to recalculate using RPI.
- It thought Mr D had changed the basis of his original complaint and added to it. It felt that Mr D had misinterpreted the wording of the SSA85.

The investigator said all the previous evidence he had seen suggested that Aviva had used CPI for the revaluation. But Aviva confirmed that it had been using RPI and continued to do so. It suggested that the confusion had been caused by Mr D's interpretation of the legislation wording and a comparison of the government figures against ones that he was using.

But as Aviva said it didn't see how it could now agree to do something it was already doing the complaint was referred to an ombudsman. So it was passed to me to review.

### *My provisional decision*

In my provisional decision I also said the complaint should be upheld but I set out a different way to resolve the matter and amended the level of compensation I thought should be awarded. I made the following points in support of my findings:

- I thought the original policy schedule was clear in setting out how the revaluation should be calculated, and it did state it ought to be the lower of 5% or RPI. I thought the statement could have been clearer, but it was further supported by an extract from another document Aviva provided from when the policy was first set up.
- But I didn't think Aviva had been clear in its communication to Mr D – and subsequently to this service – that it had used RPI in its revaluation as opposed to CPI.  
Mr D had (correctly) challenged some of Aviva's calculations of his pension income over the years and it had paid him a significant amount of compensation for its errors – so I understood why Mr D continued to question its calculations and was unconvinced by Aviva responses about using RPI instead of CPI.
- I had already asked Aviva to provide us with evidence of its calculation but it had failed to do so. Therefore I asked it to provide the evidence to Mr D before I completed my final decision on this matter.

- In addition to the significant compensation it had previously paid Mr D for other calculation errors, Aviva offered a further £300 for the delay in responding to his complaint. I thought those payments and the current offer were fair and reasonable for the previous errors.
- But I thought Aviva's responses about the use of RPI lacked clarity and, despite its assertion that it had imparted the correct explanation to Mr D throughout the complaint process, I didn't think it had. And I thought this had led to Mr D's ongoing quest for answers and his continued frustration. I said Aviva should pay a further £300 for the impact this had on Mr D.

### Responses to the provisional decision

Mr D made a number of points both about and in response to, my provisional decision. He said:

- He doesn't believe the SSA85 is referenced in his original policy contract and its significance wasn't explained to him throughout this process. He thinks Aviva should have explained it to him and that supports his view that Aviva's complaints department didn't have the required technical knowledge to deal with complex pension queries/complaints.
- He thinks Aviva simply hoped he "would give up and go away" during the course of his (extended) complaint, and believes we allowed it to continue that tactic when we investigated the complaint by being "too lenient". He says this means that, if my final decision is along the same lines, his only remaining option is to pursue a legal course of action – which he says he can't afford to do.
- He disagreed with what Aviva said it had explained and confirmed to him about CPI, RPI, and the revaluation. He thought we had just accepted what Aviva told us it had confirmed to him, instead of investigating further. He thought that if we let Aviva get away with its (poor) explanation of things it was likely to do the same again.
- This was the first time he had been made aware of the equalisation of RPI and CPI rates in recent years. He said that a clearer explanation of this from Aviva would probably have meant he wouldn't now be continuing his ongoing complaint.
- He thought the level of compensation I'd recommended should be higher. He thought that, because Aviva's version of events was inaccurate, and it hadn't provided the information I'd asked it for – then the compensation I'd suggested wasn't in line with the distress he'd suffered.

Aviva didn't think a decision should be made against it. It said it had explained its methodology involved in the revaluation – both to us and Mr D, countless times during this process. It made the following points in support of its claim:

- It confirmed that it had only ever used the same method to carry out its revaluation calculation – which included RPI only and not CPI.
- It had explained this position to Mr D on many occasions but felt he didn't accept that this matched his original policy schedule. It didn't think Mr D had raised the issue of using CPI instead of RPI, but thought that was raised by us during our investigation.
- It had confirmed that the wording within the policy schedule was to be interpreted as SSA85. It went on to provide a calculation, in line with that act, which showed that Mr D's pension (excess over GMP) was revalued using RPI and the rate had been determined by the government actuary table from its website.
- It believed it had demonstrated how the revaluation had been calculated a number of times during this process. So it didn't think it should have to do so again and it didn't believe it should pay additional compensation for the fact that Mr D simply didn't accept what it had said.

## 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.

And having done so, after careful consideration of both side's further submissions, I see no reason to depart from my provisional findings – so I'll explain my reasoning further.

In his complaint Mr D told us that he'd been in written dispute with Aviva since 2016 and had been compensated for a number of errors it had made with the calculation of his pension income. But more recently he'd discovered that Aviva, in his view, was using CPI to revalue his income at retirement instead of RPI – which he believed was in breach of his original contract. So in the first instance I've looked at the original policy schedule to confirm what it says.

### What the policy schedule says

The first provision noted that:

*"1. The annuity payable to the annuitant will be the sum of*

*(a) Your guaranteed Minimum Pension which is £1,244.36 pa as at the 5 April 2005 revalued annually from that date up to and including the tax year before age 65 (males) and 60 (females) at 4.5% pa compound,*

*(b) £6750.79 pa revalued annually from 5 April 2005 to the date of maturity at the lower of 5% and the increase in the RPI for the year, and*

*(c) £4877.57 pa revalued annually from 5 April 2005 to the date of maturity at the lower of 5% and the increase in the RPI for the year."*

While I think this could have been slightly clearer, I believe the schedule explained how the different parts of Mr D's pension income should be brought up to date when he started to take his annuity. And I think it was clear that the revaluation ought to be the lower of 5% or the increase in RPI for the year.

Aviva also provided an extract from documentation which was produced when the deferred annuity policies were first set up. I haven't been able to verify the document title, but I'm satisfied that it's relevant to the policy schedule or terms and conditions from the inception of the annuity. It said that *"the scheme operates fixed rate revaluation on GMPs from the date of leaving to State Pension Age. Benefits in excess of GMPs revalue by 5%, or RPI if less, from the date of leaving up to NRD on SSA85 basis."*

I think this was even clearer and set out the basis on which revaluation should be carried out. I'm satisfied that the calculation should be on the basis of using RPI and not CPI.

### What basis has Aviva used?

Mr D says his loss of confidence in Aviva as his pension plan administrator and the number of previous errors it made has caused him to doubt how this revaluation has been calculated. In addition, he says that an online calculator he's used suggests his pension hasn't been revalued correctly.

But Mr D hasn't provided any documentary evidence to support his claim that Aviva's

calculation is incorrect.

While Aviva says it has always carried out a revaluation using RPI and has simply accessed the relevant figures from the government website. It says this has all been carried out in accordance with the SSA85.

I've carefully considered the additional material I've been provided with, and I'm now satisfied that Aviva has carried out the revaluation in accordance with how it was supposed to – in line with the original policy schedule. Aviva has shown that the original pension incomes Mr D was due from the annuity – namely GMP and the excess over GMP both pre and post 1997, were revalued for a term of 16 years using revalued growth of 44%. This was the increase in RPI over that period of time according to the government website containing such information.

So I think Aviva has carried out the calculation in line with its statutory requirements and there's no additional evidence to support Mr D's claim that it hasn't been carried out correctly. So I don't think it's reasonable to tell Aviva that its calculation is wrong and that it should pay Mr D additional income. But I have to also consider that, in my view, Aviva hasn't demonstrated this calculation – in simple terms – to Mr D. And that its lack of clarity in its explanation has impacted him by ensuring he had to continue his ongoing complaint, as well as providing conflicting information which I think would have added to his overall frustration. I've therefore gone to look at what I think Aviva needs to do to compensate Mr D for the ongoing distress he's suffered.

### **Putting things right**

When we asked Aviva to provide a revaluation calculation to show it had used RPI and not CPI, it said it wasn't able to do something it had already done. It said it had showed Mr D, on countless occasions, what it had done. It says Mr D simply doesn't believe what it has said. But I haven't seen any evidence to show that it provided Mr D with the kind of simple calculation and explanation which would have allayed his concerns. Indeed, Aviva's final response letter to Mr D in March 2021 said *"After discussions within the business, I confirm we'll still revalue your policy based on the Social Security Act 1985 (SSA85). We're satisfied the policy schedule allows the use of this legislative method. The Pensions Act 2011 replaced RPI (Retail Price Index) with CPI (Consumer Price Index) as the basis for the minimum statutory revaluation, and it's what we've used since."*

This was in contradiction to what Aviva has said previously (in 2018) and was stated before our involvement in the complaint – so I don't agree with Aviva that it was our investigation that opened up the issue of RPI against CPI. Mr D had raised these concerns before he brought his complaint to us. So I can fully understand Mr D's concerns and frustrations here as Aviva's final response to him was to suggest that it had replaced the use of RPI with CPI following the PA of 2011.

Of course, I accept that Aviva hadn't actually done that, but as it told Mr D that it had used CPI – and failed to provide an example calculation to show that it hadn't, I think he had little alternative but to assume Aviva had changed its revaluation basis.

I think this impacted Mr D by extending the duration of his complaint – causing him to invest more time and effort in trying to get a resolution. I think it would have caused him some concerns about the level of his pension income he could expect to receive as well. So I think Aviva should pay Mr D an additional £300 for the trouble and upset this caused. I think that, in addition to the £300 that's already been offered, is fair and reasonable in the circumstances.

I know Mr D doesn't think that's the right level of compensation. He says Aviva hasn't answered his complaint fully and hasn't provided the information we requested either.

He says my provisional decision, if it becomes final in a similar form, doesn't resolve things for him. But our role isn't to punish a business or to tell it how it should behave. Our role is to ensure that, where a financial loss has occurred because of a firm's behaviour, the firm should compensate a consumer for that loss.

And where its actions have caused some degree of distress and inconvenience we make awards to compensate for that – which is what I've done here. I'm satisfied that Mr D hasn't suffered a financial loss and I think a total of £600 compensation – which includes what Aviva has already paid Mr D, is within the range of what I'd expect to see for a situation such as this.

### **My final decision**

For the reasons that I've given I uphold Mr D's complaint against Aviva Life & Pensions UK Limited.

Aviva Life & Pensions UK Limited needs to provide Mr D with the simple, clear calculation and explanation about using RPI, that it provided to us following my provisional decision.

It should also pay Mr D an additional £300 for the impact its lack of clarity about the revaluation basis had on him, over and above the £300 it has already offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 April 2023.

Keith Lawrence  
**Ombudsman**