

The complaint

Mr R complains that shortly before planning to take his retirement benefits from his pension with Aviva Life and Pensions UK Limited, the value of his plan dropped by around 24%.

Mr R would now like Aviva to compensate him for the loss to his pension fund, which he says is a consequence of their failure to manage it properly.

What happened

In 1989, Mr R took out a pension with UK Provident which was subsequently taken over by Aviva. The policy was originally set up to accept his SERPS benefits and included a guaranteed annuity rate (GAR). The plan was designed to pay Mr R an income from June 2023 once he reached his 70th birthday.

In December 2022, Aviva sent Mr R a retirement pack ahead of his birthday. The pack provided information in readiness for his retirement in six months. At that point, Aviva explained that his pension had a fund value of £27,208. Three months later, Aviva sent Mr R some annuity quotes and by this time, the value of his plan had reduced to £20,700.

Shortly afterwards, Mr R contacted Aviva asking for further information on why there was a such a difference between the December and March figures. After not receiving a satisfactory response from Aviva, Mr R decided to formally complain to them. In summary, he said that he'd asked for more information on the background for the fall in value but never received an explanation and in addition, he was unhappy about the fall itself.

After reviewing Mr R's complaint, Aviva concluded that they were satisfied that they'd done nothing wrong. They also said, in summary, that as Mr R's plan was invested in their with-profits fund, the values he'd received were only estimates at those two points (December and March). They went on to say that the final value could likely be different because sometimes, although not always, a final bonus is added to the plan which could increase its value. Aviva said they weren't able to provide any further information about the fund beyond what they'd already given and recommended Mr R visit an independent financial adviser if he needed further information.

Mr R was unhappy with Aviva's response so he referred his complaint to this service. In summary, in addition to the points he'd already made to Aviva, Mr R said he felt given that he was invested in a with-profits fund, Aviva must have mis-managed his monies to see such a fall between the two dates.

The complaint was then considered by one of our Investigators. During the assessment of the case, Aviva provided a breakdown of Mr R's monies showing what had been allocated to his plan as regular bonuses and what the estimated final bonus could be. They explained that the reason for the £6,500 difference between the December and March figures was a consequence of underlying market conditions that were impacting the final bonus. Aviva went on to say that until Mr R confirms he wishes to retire, the final bonus isn't known. Aviva

added that they should've explained this to Mr R earlier and in recognition of this, offered £50 for the inconvenience that they'd caused.

Mr R didn't want to accept Aviva's offer of £50 because he said that they'd failed to provide an explanation of the composition of the with-profits fund. Mr R says that he needed that insight to be able to determine whether he should defer his retirement date.

Our Investigator subsequently concluded that Aviva had treated Mr R fairly and she also felt that the £50 that Aviva had offered in settlement of the complaint was fair. Mr R, however, disagreed with our Investigator's findings. In summary, he felt having read further literature about Aviva's with-profit fund, he was still unclear whether he'd been treated fairly without further explanation.

Our Investigator was not persuaded to change her view as she didn't believe Mr R had presented any new arguments she'd not already considered or responded to. So, Mr R then asked the Investigator to pass the case to an Ombudsman to review that outcome because he was concerned that, if he did accept Aviva's offer of £50, it could affect any future legal proceedings.

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 have summarised this complaint in far less detail than Mr R has done and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the key issue here – and that's Mr R's disappointment that his estimated retirement benefits reduced by £6,500 between two statements.

Having carefully considered the points that Mr R has made regarding Aviva's failure to explain the background to the fund composition and why his fund had fallen in value so much, I agree with the Investigator and for broadly the same reasons. Whilst I am upholding Mr R's complaint because Aviva could have provided him with the information about his bonus breakdown earlier than they did (July 2023), I should say that I'm of the view that the offer Aviva have made to put things right is fair. I'll explain why below.

What appears to be at the heart of this complaint is that Aviva reduced the estimated final bonus on Mr R's plan. Mr R believes Aviva did this because they mis-managed the underlying investments. Aviva say that they had to reduce the estimated final bonus on Mr R's plan because of the investment returns in the interim. Whilst I can consider complaints about investment performance, in most instances, I would need to see evidence that Aviva had done something wrong, and I can't just rely on actual or perceived poor performance. Many consumers have seen the value of their pension funds fall over the last 18 months given the economic conditions not just across the UK, but wider financial markets too. So to be clear, this isn't just a Aviva issue, and it's something many other consumers are having to face at other businesses too.

Whilst I appreciate Mr R is likely to be disappointed by my decision, the level and nature of bonuses declared by Aviva on its with-profits fund is the result of a commercial decision taken by them acting on the advice of its Actuaries, which impacts *all* policyholders invested in that fund. As a result, it is not within the remit of this service to either sense check Aviva's decisions or scrutinise their calculations.

However, I think it's worth explaining about with-profits funds 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 that particular product. But those difficulties do not necessarily mean that Aviva has done something wrong or is not acting in accordance with its regulatory obligations.

The industry regulator, the Financial Conduct Authority (FCA), recognises that with-profits fund providers have a considerable amount of discretion about how they operate those funds. So, the regulator has 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 Aviva's with-profits fund at issue here.

The amount of bonus paid, if any, is determined by Aviva's investment objectives which are consistent with its regulatory obligations. That's to allocate bonus amounts as fairly as possible to all of its investors in its with-profits fund with the aim of providing a competitive return at the end of the term. Aviva have explained that any decision to pay a bonus is proposed by their Actuary who then consults with their with-profit committee and then the final decision on whether to pay bonuses rests with Aviva's board. So, it seems to me that Aviva has checks and measures in place to demonstrate to the regulator how they reached any decision to pay (or not pay) a bonus. Their decision-making approach appears to mirror that set out by the regulator that I've already mentioned above. However, it is not the role of this service to audit those decisions and assess the level of any final bonus Aviva has awarded Mr R. The responsibility for auditing Aviva falls on the regulator.

It's important to remember that bonus rates take into account various factors. These include not just current or recent investment performance (which Mr R has referred to in his complaint) 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. Aviva have already acknowledged that the returns will vary every year and just because a low or no final bonus is paid in one year, it doesn't necessarily mean that will be the same in the following years. I've looked at Aviva's literature and website and from what I've seen, Aviva doesn't provide any warranty that a final bonus would be applied to a consumer's plan so such payments are at the discretion of Aviva.

I've also looked at the various documents that Aviva have shared with Mr R. Aviva can't distribute all of the returns it makes. That's because by their very nature, with-profits funds have to hold some monies back to smooth out the returns for policyholders when the markets may be depressed in the future.

This service doesn't have the same level of information that's available to the Actuaries who make bonus decisions and manage the with-profits fund. In addition, the customer service staff at Aviva won't have this level of information either – so they won't know what bonus decisions might be around the corner. Such information is also likely to be market-sensitive when you consider that Aviva is listed on the stock market and has shareholders. As such, it's inappropriate for this service to direct Aviva to share that information with either ourselves or Mr R.

From 2004, the regulator has required all insurers to publish a Principles and Practices of Financial Management (PPFM) document. I've checked and this is available on Aviva's website. It explains the steps Aviva are taking in managing the returns and level of guarantees within Mr R's fund. In addition, details of the asset allocation of the fund is covered along with a history of the returns and bonuses that Aviva have applied.

Having carefully considered Aviva's correspondence with Mr R, I'm satisfied that Aviva has broadly explained the factors that have led to the situation he has complained about. But I am mindful of the opaque nature of these funds and the explanations that Aviva has given (or we can't give) doesn't always satisfy consumers.

I can very much sympathise how concerning it must have been for Mr R to see the value of his pension fall so close to retirement. And, I can well understand why he wishes to have sight of wider information to help him shape his retirement plans, but I cannot direct Aviva to disclose its calculations to Mr R as this could involve revealing commercially sensitive information and I don't consider that fair or reasonable. If Mr R has concerns about the management of Aviva's with-profits fund he can approach the regulator directly.

My final decision

Aviva Life and Pensions UK Limited has already made an offer to pay Mr R £50 to settle the complaint and I think that this offer is fair in all of the circumstances.

So, my decision is that Aviva Life and Pensions UK Limited should pay Mr R £50 if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 20 October 2023.

Simon Fox
Ombudsman