DRN-4423432

The complaint

Mr K complained about a fall in value in his policy provided by Aviva Life & Pensions UK Limited (Aviva) which he felt was a penalty.

What happened

Mr K said his final value was reduced by an early retirement factor. He had not been told this would be applied. He took out his contract in 1983/4. He provided documents that illustrated taking his pension at age 60 and 65. He had never been given a specified retirement date of 70, there was not reference to a market value reduction (MVR) in the contract and he had been told in 2010 that he could take his benefits any time between 60 and 75 without penalty and a guaranteed annuity rate would apply. While Aviva said the reduction was not a penalty it clearly was. It had therefore reduced unilaterally the guaranteed annuity rate confirmed in his contract and a later letter of 25 November 2010.

Aviva said it sent Mr K a pack showing his pension had a value of around £141,000 but the final payment was around £135,000. It said both values included bonuses that are not guaranteed. The bonus rates change twice a year on 1 January and 1 July. The final bonus applied when the policy was paid was lower as a consequence. It explained his policy was written with a flexible retirement age between 60 and 75 but normally age 70. His policy also carried guaranteed interest calculated to age 70. If the benefits are taken before age 70 there is an adjustment to reflect that. This discount was called an ERF. It apologised if it had not clearly explained things and sent £150 to his bank account.

My provisional decision

I issued a provisional decision in this case. I said the following.

I considered the papers presented.

Initially neither Mr K or Aviva had been able to supply me with original policy documentation in particular the original trust deed and terms of the master policy. That isn't uncommon for policies of this age and given that businesses have often been taken over by other businesses since the policy was started.

However more recently Aviva had supplied a master policy document showing a retirement age of 70. Mr K said Aviva had never referred to this document and he had not seen it before. He also said that in paragraph 8 of the document it said the amount of benefit would be

''Calculated on such basis as the association shall determine with the intent that it shall be consistent with the amounts recorded in the register in respect of the annuitant'

He said this meant that whatever value stands to the policy at the time of taking the annuity shall be the figure upon which everything is calculated. Therefore the final figure is the one that should be used and it was from that figure that the ERF was deducted which he didn't think was right.

I also based my view on the information available to me including copy documents provided by both parties which show how the scheme had been operated by Aviva.

It was clear that Mr K was invested in a with profits fund. This was a common way of investing in the 1980's. They were generally thought to be more cautious than an investment which was linked to the rise and fall of particular assets such as shares. In this case there was an annuity rate and also bonuses. I said that because the original member statement gave examples of both of these.

Typically in a with profits fund if a member stops paying contributions early or retires early the policy value is scaled back.

There are rules governing the operation of with profits policies. Since 2004 the regulator has required providers to publish a Principles and Practices of Financial Management Document for their with profits funds which explains their approach to managing the level of return and guarantees within the fund.

The Conduct of Business Rules published by the Financial Conduct Authority (FCA) which is the financial regulator for Aviva, requires it to hold assets in each of its with profits funds of a value at least sufficient to cover the 'with-profits policy liabilities'. The rules also set out provisions for ensuring that policyholders within with profits funds are treated fairly including provisions such as market value adjustments. So there are regulations regarding how Aviva operates the with profits fund and making sure all the members of the funds are treated fairly.

This extra layer of regulations should be reassuring to Mr K in terms of ensuring all members of a fund are treated fairly as between the different members who may have competing and slightly different interests in the fund. It is important Aviva is fair to all members.

This service does not have the same level of knowledge and information that is available to the actuaries who make bonus decisions and manage the with-profits fund so we cannot check their calculations. I could however consider what has happened in the light of the scheme information that I had seen.

Mr K had helpfully broken his complaint down into parts so I used his structure as follows:-

Normal Retirement Date

1. He said there was nothing in the documentation to say that his normal retirement date was 70 or what that might mean in terms of the guarantee and he was never asked to select a retirement date.

I didn't agree for the following reasons.

As we now have a copy of the original policy document it was clear that the normal retirement date is assumed to be 70.

But this was also reinforced in the original policy member's statement from 9 February 1984 and other papers. These didn't set out a retirement date but the notes said he could choose to start his pension at any time from his 60th to his 75th birthday. The papers provided an illustration of benefits at age 60 and 65 assuming that premiums continued to be paid.

The amounts illustrated were made up of a guaranteed capital sum, future reversionary bonus and additional bonus.

On death before ‘commencement of the pension’ there was a return of premiums paid with interest (at that time 12.54%) or the value of the fund if greater.

It also listed guaranteed conversion rates at different ages.

I had seen letters from 2010 onwards (referred to below) which say that Mr K’s normal retirement date for the policy is 70, but that he can retire at any age between 60 and 75.

Mr K says he didn’t actively select age 70 but as we now have the original policy document we know age 70 is correct. But even if Mr K had not seen that document age 70 has been reflected in the papers I have seen (and considered in more detail below) for at least the last 13 years.

I do note Mr K feels age 70 is arbitrary, not least because state pension age has, until recently, been age 65 for men. I agree that it does seem arbitrary but some date needed to be selected by reference to which to calculate values and the policy document shows this was age 70.

So I thought it was clear 70 is the retirement age for his policy and this has been reflected in correspondence with Mr K.

Intention to take benefits.

2. Mr K said the November 2021 quotation showed a transfer value of around £141,000 but didn’t mention any warning about the impact of taking his benefits before his 70th birthday. When he applied to take the benefits in February 2022 the lump sum was reduced by about £1,300 and the annual income by about £300. When he questioned this he was told it was all to do with bonuses that had been reduced in 2022. But there was no specific warning about this only general warnings that the value can go up and down. He was then told there was a further reduction called an early retirement factor.

I have considered what he has said in the light of the following:-

- The original member statement says ‘*Future bonuses will depend on future profits and are not guaranteed. The figures should be taken as no more than an illustration of the effect of the present level of bonuses which reflect past investment conditions’*

  I think this implies that bonuses will vary.

- a letter of 25 November 2010 from Aviva to Mr K referring to a change in format of the annual statement. It says that

  The 'fund value’ quoted on your statement is the amount of bonuses paid to date for this policy, <u>*available at age 70.*</u>

  I also confirm that although all the Group SERA policies were nominally written to age 70 the benefits can be taken at any age 60 - 75 without penalty and that the guaranteed annuity rate will apply at retirement.

This made clear there is an assumption of payment at age 70 and therefore it isn’t unreasonable to assume the amount would not be the same if it was taken at a different date. Otherwise there was no reason to say available at age 70.

I didn’t think the reference to taking benefits at any time between 60 and 75 without penalty meant that no adjustments could be made to the amount paid. I did understand that Mr K feels the adjustments are in effect penalties but I didn't agree.

I said that because it seemed to me the adjustments are made to ensure the value paid fairly reflects the date of payment. I didn't think it was reasonable to assume the same amount would be paid at age 60 as at age 75 because that would ignore the number of additional years of growth in the underlying investment and in the case of the guaranteed rate, the number of years it was likely to be paid. Illustrations had to make an assumption about an assumed future date of payment. It was therefore necessary to adjust the values at the date of actual payment. This was reflected in the original member statement and illustration of benefits at the different ages and in the comments about bonuses. So I did think it was part of the contract.

- a letter of the 6 December 2012 from Aviva to Mr K regarding his policy. It says:

  - the transfer value quoted is not guaranteed and includes an element of final bonus which can change at anytime.

  - it points out that '*the projected amount for the annuity on the annual benefit statement is based on the Financial Services Authority guidelines for growth rates. Unfortunately at any given time the projected value to age 70 (which is normally the normal retirement date for the contract although the benefits can be taken at any age between 60 to 75 without penalty) may not reflect a pro rata amount one year later as the actual growth rate for the previous year will have been taken into account*.'

  - the annual benefit statement does not use the guaranteed annuity rate for any part of the fund as there *are too many variables* to make this kind of projection.

  - It confirms the Guaranteed Annuity Rates that would be lost on transfer and list them by reference to the year and age (ranging from 2006 to 2035 and age 60 to 75*).* It further says *' The guaranteed annuity rate applies to any premiums paid before 1 January 1998. Single premiums or increases to annual premiums (which can be paid monthly, quarterly, half yearly or annually in advance or arrears) paid after this date will attract our current annuity rate at the time of retirement. If an annual premium was being paid at 1 January 1998 and continues to be paid at the same level after this date this premium level will continue to attract our guaranteed annuity rate.*

  - *The guaranteed annuity rate applies to any type of single life pension. However for joint life pensions, the joint life annuity rate is calculated by combining the members guaranteed annuity rate with the current annuity rate applicable to the dependent at the date of retirement.' It confirms the Normal Retirement Date for the contract is age 70 but says 'benefits can be taken at any age 60-75 without penalty'.*

I thought these reinforced the fact the calculations are by reference to age 70 and that any adjustments for date of payment, will not be a simple pro rating of the value and that the guaranteed annuity rates vary by age.

Further as Aviva said the 2021 quote was based on higher bonus rates which no longer applied by the time of the 2022 quote. The original policy documents did warn about bonus variability.

However I noted Aviva didn't warn Mr K that a new bonus rate would apply from 1 January nor that the 2022 rate was lower. I didn't know when Aviva set its bonus rate for 2022, but it must presumably have been in advance of 1 January 2022, so it would have known that the 2022 rate would be lower than the 2021 at some point in time before January 2022.

I considered whether it should have warned Mr K about this but on balance I thought the general warning about bonuses in the original documents should suffice. I said that because the original documents made clear that the future bonuses depended on future profits and were not guaranteed so it was reasonable to expect them to fluctuate. Further it would not have known before January 2022 that he would take his pension in early 2022 and that the change in bonus would affect him.

I note Mr K referred to the performance of the stock market at the time but the bonuses are defined by the underlying investments and the FCA rules governing the management of a with profits fund not by how the stock market was performing at the time.

So I thought Mr K was warned about adjustments in advance.

Further the original scheme documents show the guaranteed conversion rates for each £1,000 of capital were different at age 60 to 65 and by extension presumably at any other age. That would seem reasonable as the sooner the pension is taken the longer it will be paid and therefore the more it costs. This is reflected in the scheme documents which show a lower rate at a younger age and higher rate at an older age. So while the guarantee is available its amount changes by reference to the age it is taken.

Further the December 2021 benefits illustration said the guarantee only applied to a single life annuity, that didn't increase, had a 5-year guarantee and was payable monthly in advance. The guarantee rate only applied to about £120,000 of the around £141,000 fund.

The pension amount varied from £14,000 to around £11,000 pa . A comparison table made clear that the annuity under the pension plan guarantee assumed he did not take any tax-free cash. Further it contained a warning that said

> ***Please bear in mind*** *All the options shown are examples of the income you could receive when you retire. The actual amounts you receive could be different as your retirement fund could go down as well as up.*
>
> ***Please remember:***
>
> *The figures shown are not guaranteed and could change before you retire. Fund values can go down as well as up. You could get back less than you have invested.*
>
> ***Your pension guarantee*** *- you told us you're aware that your pension guarantee may be affected by your retirement age or the annuity you choose we've included a quote so you can see what you might be giving up if you're thinking of not taking your pension guarantee option we strongly recommend you seek financial advice'*
>
> ***Cash lump sum risk warnings***
>
> ***Your pension guarantee*** *- you told us you're aware that your pension guarantee will be lost if you take a cash lump sum. We've included an annuity quote for an income for life so you can see the value of the pension guarantee option you might be giving up. If you're not taking your pension guarantee option we strongly recommend you take financial advice.*
>
> ***Your retiring later option***
>
> *Your current retirement date is* ***(the date of Mr K's 70th birthday****)*

While I agreed there was no reference to an MVR in the original policy documents there has been in later documents (such as the recent anniversary certificates). As I had explained Aviva had duties to be fair to all fund holders in how it determines his share of fund and there are regulations about how it operates its with profits fund including the possibility of an MVR. If Mr K takes benefits sooner than he was assumed to there needs to be an adjustment to reflect that. It was clear an MVR did not apply at the original retirement date but may apply if benefits are taken before that date which is what happened in Mr K's case.

In summary I thought all of these warnings reinforced that there will be changes depending on the age at which the pension was paid and that Mr K's retirement date was age 70. While they didn't specifically warn or remind him about the impact of payment before age 70 the 2010 letter did, and the 2021 illustration recommends him seeking financial advice.

Early Retirement factor

Mr K said there had been no reference to an MVR or ERF in the original documentation from Aviva, and a letter of 25 November 2010 confirmed there was no penalty for retiring between 60 and 75. This was confirmed by letter of 6 December 2012. Further the guarantee rate should not be affected by when the benefits are taken as it is in the contract. Aviva simply says the values it has quoted previously already contained an ERF. He argues that No ERF is mentioned in the policy terms. The original illustration issued at joining showed benefits at 60 and 65. But I didn't agree for the following reasons.

1. Aviva said there is an assumed guaranteed interest rate to age 70 and the ERF discounts this back for earlier payment. I thought this was reinforced by what was said in the November 2010 letter I had quoted above in the sense it was clear there is an adjustment by reference to age 70. I thought it was also reflected in the section on death before retirement in the original member statement from 1984. This clearly shows there is an underpin of the value of the premiums plus interest or if greater the fund value. This shows that an interest underpin was part of the policy and therefore there is a need for an adjustment or ERF to ensure the correct value is paid.

2. Mr K took his pension 11 months before his 70th birthday so it seems reasonable these adjustments are made.

3. I thought all of the papers (including such original documents as I have seen) reflected the fact that an adjustment has to be made where the pension is taken before age 70, as was the case here.

4. So on balance given all of the information I thought it was reasonable to conclude that the ERF was part of that adjustment and while not expressly stated in the original terms is implied in how the terms were presented and supported by subsequent information provided over the years about how the fund has operated and further by the regulations governing the operation of with profits funds.

5. In summary based on the evidence and for all those reasons I didn't think the ERF was a penalty but part of the way policy values were calculated.

6. I did understand that Mr K felt any adjustment was a penalty in the sense that it reduced what he received. But I didn't agree. What he received has been reduced to ensure it fairly reflects the value of what he was entitled to at the date he took his benefits not as an arbitrary penalty for early payment.

7. I do note that he says, had he known he would have waited to get what he calls 'enhanced benefits'. But I did think the documents provided show he was given warnings and recommended to take financial advice to understand the impact of his

decision. So I didn't think I could reasonably hold Aviva responsible for his lack of awareness.

8. Further I noted he felt the ERF reduced the conversion rate which must be against the contract terms. But for reasons given above I don't agree. Further it is clear the conversion rate always varied by reference to the age benefits were taken and that was clear in the original policy documents which contained indicative conversion rates at two ages only.

9. I had also considered his comments about paragraph 8 of the policy document. This is headed 'Alteration of Retiring Date'. I thought the wording reinforced the need to adjust the benefit where there was a change in retirement date as it says *Calculated on such basis as the Association shall determine with the intent that it shall be consistent with the amounts recorded in the register in respect of the annuitant'*. I thought it gave Aviva broad powers to decide the basis of calculation. Those powers would not be needed if a change wasn't needed. Also it didn't say the amount will be the same as registered but instead says *consistent* with the amount recorded which further reinforces that adjustment was needed.

Communication

I did however think Aviva could have explained things better. The more it tried to explain the more confusing the position became. It was clear that its explanation had not helped Mr K to understand what it had done. At times the explanations have been poor and sometimes wrong. For example in an email sent on 30 December 2022 it said '*As pension funds are invested in the Stock Market, they are subject to sudden rises and falls, and this appears to have happened to the funds that you were invested in'*. When Mr K first complained the adviser didn't know what fund he was invested in. It subsequently became clear he was invested in the with profits fund so this explanation was wrong. I think that Aviva was in breach of its obligation in FCA principle 7 to '*pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading'.*

Distress and inconvenience

As I have concluded that Aviva has failed in its obligations I could consider an award for distress and inconvenience. Such an award was to reflect the impact on Mr K not to punish Aviva. It was clear that it has taken Mr K some time to get information and he had to repeat his requests and that this has dragged out over several months. Given this I thought an award of a total of £500 was fair and reasonable in the circumstances. For the avoidance of doubt if Aviva had already paid £150 it need only pay a further £350.

I proposed to uphold this complaint in part and direct that Aviva Life & Pensions UK Limited should within 30 days of this service notifying it that Mr K has accepted my decision pay Mr K a total of £500 but for the avoidance of doubt it need only make such further payment to bring the total it has paid to £500.

Aviva said it thought my provisional decision was a fair and reasonable outcome.

Mr K said the following.

1 . I had said "*it is clear Mr K was invested in a with profits fund*" . He acknowledged that in Aviva's letter of the 6th December 2012 it stated that he was invested in a "*with profits contract*" he did not agree that that is necessarily the case. First of all, the contract was entered into prior to the Finance Act 2004, referred to and was clearly described as a

personal pension plan, with only a basic minimum payment each year, but with the ability to vary payments in any year by whatever amount the individual then wished to invest. That is very different to a standard with profits life policy.

Secondly, a with profits, fund/policy is typically for a shorter period than a pension plan. It would be highly unusual for a with profits investment to run for 35 to 40 years.

Thirdly, with profits, fund/contract can be cancelled / cashed in at any time for a cash sum. This fund can only be taken at the pension date which is no earlier than 60

Fourthly he had managed to find a copy of the original booklet describing the plan. This made no mention of an ERF, but made specific reference to "flexibility of benefit". It referred to an individuals "*accumulation account*". This is a feature not found in a with profits contract. Each policyholder under this pension plan has their own specific account and under "*growth of contribution*" on page 2, it sets out what will go into that account namely each individuals premium contribution, plus a basic guaranteed interest sum, and finally a bonus interest. Thus, an individuals investment grows by clear and specific factors and no 'smoothing ' is required.

He questioned therefore the description applied by Aviva – in any event, and he referred to this further. He did not accept that the ERF was a " smoothing'. In any event this may not be relevant as he had accepted the value before the deduction of the ERF .

2 Intention to take benefits

He accepted that bonuses will vary – that has never been an issue. He had never suggested that *' the same amount would be paid at age 60, as at age 75*" . He also accepted that conversion rates vary depending on age, but his point was (and always has been) that once the value of the fund is fixed (even if it has been subject to "smoothing") upon retirement then the appropriate conversion rate is applied to the value of the fund. What has happened here is that the rate has been applied to the fund, but then a further deduction has been made i.e. the ERF.

He suggested that it was unsurprising that he queried the value of the fund sent in February 2022 when between December 2021, and that date the stock market, had risen by just over 5%. The fund was likely to be invested in a mixture of equities bonds and investment trusts. It was then explained that the value had been depressed by the bonus applications which he accepted but then learnt for the first time about the second deduction of the ERF.

It was not entirely clear to him, if I was equating the reference to the MVR (which only appeared very latterly in Aviva documents) with the ERF. He presumed not.

The term ERF did not appear in any of Aviva's documents and was only revealed to him when he queried the value of his fund after he had decided to take benefits. It seemed that the fund is subject to both smoothing and the ERF, neither of which terms or conditions appear in the original contract

4 Early Retirement Factor.

I supported Aviva's approach / application of the ERF but he said the argument for such justification was extremely thin;

1. There was not a single piece of documentation which clearly and unequivocally alerts a policy holder to the existence or prospect of the ERF

2 It seemed Aviva was saying that each annual statement already factored in the ERF (but of course did not explain such)

3 When he asked for his options prior to retirement and made an election to take benefits, the pack that was sent in December 2021, made no reference whatsoever to the possibility of the ERF. On page 35 (of 48) of that pack it identified his retirement date as his 70th birthday, but critically did not warn him that if he took benefits before that date, they would be reduced by the ERF.

4. I stated that the November 2010 letter supports Aviva. With respect he said there was nothing in that letter that could possibly lead him to conclude that there would be an ERF applied if he took benefits before 70. On the contrary, he suggested it says the opposite on page 6 of the letter. Here was an opportunity to explain about the ERF, but nothing was said. There was a further opportunity in Aviva's letter of 6 December 2012 when once again agreeing benefits could be taken without penalty. Why not say "*but if you take the benefits before your retirement age of 70 an ERF will be applied'* Aviva introduced and used the term penalty. He questioned what they meant, therefore by penalty, if not a reference to the ERF?

A normal reading and interpretation of both those letters was confirmation that if benefits are taken between 60 and 75 years of age, they would be calculated according to the value of the fund at the time and the conversion rate then applicable. There is nothing "implied" that could be read into those statements.

5 The only supporting factor in Aviva's favour was the reference to a possible adjustment contained in the master policy document at paragraph 8 of the Second Schedule. This suggests a very wide discretion being given to Provident Mutual (now Aviva) but offers absolutely no indication or clarification as to how or when such an adjustment would be applied. It was extremely vague and extremely unhelpful in giving any guidance or assistance to the reader as to how it is to be interpreted. It is also significant that Aviva in all their correspondence with him made no reference whatsoever to this Paragraph in seeking to justify the ERF. He questioned whether they were properly aware of it and when making the decision to apply an ERF paid any attention to it. It would be useful to see the internal documents giving rise to the application and calculation of the ERF.

I had placed my own interpretation upon the clause, and if the words of the paragraph ended at "*shall determine*" then he might agree. However, the words following do add some clarity suggesting that the benefits should be "*consistent with the amount recorded in the register*". What could that possibly mean if not a reference to the value standing to the individuals ' accumulation account

'For Aviva to attempt to rely upon that clause to apply the ERF (in circumstances, where absolutely no previous warning or indication had been given) and in circumstances, where no one can actually say, precisely what it means, or how it is to be applied, seemed to him to be something that would not be accepted as persuasive by a Court if this matter were before such.

6 In paragraph 4 of the section, the ombudsman accepts that the ERF is not expressly stated in the original terms (in fact it is not referred to at all) but then goes on to say that it is implied. I do not accept or understand the comments made about information in other documents that might be implied to justify Aviva's position. It requires a far too great a leap of imagination and understanding on behalf of the policyholders particularly when a policyholder has specifically asked the question and been told there was no "penalty"

Further, he simply did not understand how I reached the conclusion (paragraph 1) that an '*interest underpin'* supports the need for an adjustment before aged 70. The section, I referred to is death before retirement, which says that the deceased estate will receive a repayment of all premiums, plus interest or the value of the fund if greater which seems entirely fair. He failed to see why that leads to the conclusion that upon retirement, this provision supports the application of an ERF or how a policy holder could take this information as meaning that.

Conclusion

Despite the significant quantity of correspondence and documentation, it seemed to him that this dispute boils down to a very simple issue – was the ERF adequately indicated/explained to the policyholder either at the outset of the contract or immediately before taking benefits, so a considered view could be taken.

He thought it was clear that there was nothing to draw the policyholders attention to the possibility of any ERF at the outset. The master policy reference was simply too vague and unclear.

This proposed deduction was not pointed out, or mentioned at any stage during the life of the contract nor in advance of him electing to take benefits. It only emerged upon his querying, the significant reduction in value of the fund when it was finally paid out.

Aviva had simply failed in their duty of care to the customer to be transparent and clear and fairness dictates that the reduction in lump-sum and annual pension applied by the ERF should be restored.

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 considered the comments made by Mr K but have not changed my mind. I have not dealt in detail with every comment that he has made but have considered each of them carefully before reaching this my final decision.

For completeness I would comment as follows.

Nature of the pension policy and with profits investment

Mr K questioned the nature of this pension and whether his pension was invested in with profits. My comment that he is invested in a with profits contract is a finding of fact based on the papers presented.

Intention to take benefits

I note he accepts that conversion rates vary depending on age. He says that what has happened here is that the rate has been applied to the fund, but then a further deduction has been made i.e. the ERF.

I note he says the ERF isn't expressly named in the documentation. I would refer him to my reasoning set out under the heading Early retirement Factor in my provisional decision.

Early Retirement Factor

I note Mr K's further comments on this but would refer him back to the reasoning set out in my provisional decision.

With respect to the interest underpin I referred to the death by way of example that interest was part of how the policy works. Mr K has also now helpfully submitted a copy of what he says is the booklet for this policy.

I have considered this and note extensive references to interest which further reinforce that interest is part of how the policy is operated. In particular the section headed Pension Plan says '*a contract for the self-employed and those in non-pensionable employment under which contributions are accumulated with interest in a tax-free fund until retirement or earlier.'*

In the section 'growth of contributions' it says

'The contributions which you make to the PM personal Pension Plan will be credited to your individual Accumulation Account. This will be increased each month taking into account any contributions paid during the month, less specific deductions to cover expenses, and the addition of two amounts of interest both calculated on a daily basis

(1) a basic guaranteed rate of interest, and

(2) bonus interest based on our current rate of pension bonus

The above combination is designed to give you the benefits of the successful investment of our funds including capital appreciation. Future bonus interest cannot be guaranteed but you have a considerable degree of security as bonus interest already declared cannot be taken away if investment values subsequently go down.

For those who were under age 65 when they started to contribute to a PM Personal Pension Plan additional bonus interest is being allotted to the Accumulation Account <u>at retirement</u> thus increasing the benefits. It is intended that this feature will be continued in future.

Clarity of description

He said the ERF wasn't adequately indicated/explained at the outset of the contract or immediately before taking benefits. He thought it was clear that there was nothing to draw the policyholders attention to the possibility of any ERF at the outset. The master policy reference was simply too vague and unclear.

I don't agree. I would refer Mr K to the section of my provisional decision headed '*intention to take benefits'* which referred to multiple statements about bonuses and that the fund value was quoted as at age 70.

On balance based on all the evidence presented and for all the reasons I have given I remain of the view that it is fair and reasonable to conclude ERF is part of the way the policy operated and has been explained in the papers provided to him.

He says Aviva had failed in their duty of care to the customer to be transparent and clear and fairness dictates that the reduction in lump-sum and annual pension applied by the ERF should be restored. For the reasons already given I don't agree. But even if Mr K is correct a failure to be clear does not then entitle Mr K to receive benefits without the reduction. I say that because he is not entitled to receive his benefits on that basis and the papers I have considered indicate that the figures he had were not guaranteed and that fund values were quoted by reference to age 70.

I have already accepted that Aviva's communication was poor and made an award for the distress and inconvenience caused.

Putting things right

I remain of the view that I should uphold this complaint in part and direct that Aviva Life & Pensions UK Limited should within 30 days of this service notifying it that Mr K has accepted my decision pay Mr K a total of £500 but for the avoidance of doubt it need only make such further payment to bring the total it has paid to £500.

My final decision

I uphold this complaint in part and direct that Aviva Life & Pensions UK Limited should within 30 days of this service notifying it that Mr K has accepted my decision pay Mr K a total of £500 but for the avoidance of doubt it need only make such further payment to bring the total it has paid to £500.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 1 December 2023.

Colette Bewley
Ombudsman