

The complaint

Mr B complains that Aviva Life & Pensions UK Limited ('Aviva') has not paid annual bonuses on his four with-profits endowment policies for more than 10 years, and terminal bonus rates have reduced. He says he's also lost out as a result of Aviva making changes to a reorganisation bonus following a recent merger of its with-profits fund. Mr B also complains that Aviva has provided him with incorrect historical bonus rate information, and he's unhappy with the level of service he's received from Aviva's call centre.

What happened

While I have read and considered everything provided by both Aviva and Mr B, the following is a summary of the background to this complaint.

Mr B holds four with-profits endowment policies with Aviva, which he took out in the 1980's.

In 2021, Mr B complained to Aviva about the lack of annual bonuses on his policies for the last 10 years and that it was reducing the terminal bonus. Mr B said Aviva couldn't make a good investment return. For the sake of completeness, I can see Mr B also complained about an administrative matter, which was resolved and so does not form part of this complaint.

Aviva replied in a final response letter of October 2021. In summary it explained the different bonuses applicable to Mr B's policy – annual or reversionary bonus, terminal bonus and a reorganisation bonus as a result of change to its with-profits fund in 2001. It said none of the bonuses were guaranteed. It said no reversionary bonus had been applied since 2012 because of changing economic conditions, lower interest rates and expectations about lower future investment returns. It set out the considerations in deciding terminal bonus rates under the headings of investment performance, fairness and financial strength. It said it was satisfied it had acted within the terms and conditions of the policies and acted fairly in calculating bonus rates.

Dissatisfied with its response, in February 2022, Mr B brought his complaint to us.

Prompted by this, and following notification from Aviva that it was planning another reorganisation of its with-profits fund – a fund merger – which Mr B was told would result in the reorganisation bonus being replaced with a one-off bonus to be added in January 2023, Mr B asked a series of questions of Aviva. And over the coming months, Aviva replied to him in a number of separate response letters – in part because Mr B wasn't satisfied all of his questions had been answered. Mr B asked for these responses to be added to his complaint file and for us to consider the points he remained dissatisfied with. The following is a summary of the responses to the questions Mr B asked.

In March 2022, Aviva provided Mr B with historical terminal bonus rates applicable to his four policies as he requested.

In April 2022, Aviva told Mr B that it wouldn't address his concerns about bonuses not being added to his policies because it had already addressed this in its response of 2021. In

response to Mr B's question about the provision of annual bonus information, it said this wasn't contained in the regulatory requirement letters issued on endowment policies but was included in his annual bonus statements sent out between May and July. It explained that, as part of the planned merger of the with profits funds, the reorganisation bonus was being replaced with one-off bonus due to be paid in January 2023. It said the terminal bonus was not being removed. And in answer to Mr B's request for details of the one-off cash payments he received on his policies in 2001 following the first fund reorganisation, it said because of the amount of time elapsed, this was no longer available. It said it had instructed its actuarial team to provide this and it would be sent separately. It said it would pay Mr B £50 for the inconvenience.

In May 2022 Aviva provided Mr B with the details of the cash payments it made to his policies in 2001.

One of our Investigators looked at all of this and they concluded Aviva hadn't done anything wrong. They said while Aviva could decide to add bonuses to Mr B's policies they were not guaranteed. They said Aviva has a wide discretion in terms of the rates it applies and they didn't think Aviva had acted unfairly here or that the lack of bonuses was evidence of Aviva acting incorrectly or mismanaging the fund. They said Aviva's decision to change the reorganisation bonus wouldn't leave Mr B worse off. They said the reorganisation bonus announced in 2001 was not guaranteed. They said this was due to be paid at surrender or maturity and could reduce further, whereas the one-off bonus paid instead meant it guaranteed receipt of this bonus. They said any terminal bonus due would be added to the reorganisation bonus. They also pointed to an independent actuary report, which concluded Aviva's with-profits customers would not be materially adversely impacted by the fund merger.

Mr B disagreed and didn't believe the Investigator had addressed all of his concerns. In summary he said the reorganisation bonus given in 2001 had been taken away. But he said, Aviva's own information says that once a bonus has been awarded it cannot be taken away. He asked how Aviva could do this. Mr B also said the information Aviva provided on terminal bonuses was incorrect. And he referred to the customer service issues he'd experienced and that nobody could talk to him about his policies because of their age.

Following the Investigator's assessment, Aviva sent two further letters to Mr B direct saying that it believed it had answered all of his questions and that there was no discrepancy between the historical bonus information it had provided in March 2022 compared to the information provided in his annual bonus statements.

The Investigator then considered the outstanding points Mr B raised. They repeated what they'd previously said about the bonus issues. And they added that, they didn't agree Aviva had provided Mr B with incorrect historical terminal bonus information in March 2022. They said they had compared it with his annual bonus statements from 2016-2022 and found no errors. They said they believed Mr B was looking at the wrong 'term gone' column when looking up which terminal bonus rate was applicable to each of his policies. But they said in any event, even if there were errors it doesn't impact Mr B because the rates are historic and so not applicable to his policies.

They said Aviva's helpline was available to all, but it was sometimes necessary for a separate team to answer more detailed questions which might take longer which they thought was fair. But on reflection, they said it appeared things were more difficult for Mr B because of the age of his policies, so the level of service he received wasn't as it should have been. They recommended Aviva pay Mr B £100 in recognition of the inconvenience caused to settle the complaint.

Aviva accepted the Investigator's conclusions. Mr B continued to disagree. It seems Mr B's main concern is about the change in the reorganisation bonus. In summary Mr B believes Aviva should not have been able to change the percentage bonus announced – i.e. it should have stayed the same until maturity. And he repeated his concern about the removal of the original reorganisation bonus and that Aviva should not be allowed to remove it given it says once it's been awarded it can't be removed. And he believes he's lost out because his policies will have a lower value at maturity as a result of what's happened.

Because things couldn't be resolved informally, the complaint was referred for a final 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.

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, I've decided to reach the same overall conclusion as the Investigator and for broadly the same reasons – I've decided £100 is a fair way to settle this matter. I'll explain why, although I think the Investigator has explained things clearly and there's not much more I feel I can usefully add to what Mr B has already been told.

Non-payment of annual / reversionary bonuses for 10 years

Aviva's explanation of the different bonuses applicable to Mr B's policy was in my view comprehensive and clear. I also think the Investigator provided a concise summary of the position. But generally I'm unable to consider complaints about the performance of an investment, which is ultimately what Mr B is complaining about. This is because the way in which a product provider, Aviva in this case, manages investments and decides to pay a bonus is a matter for its own commercial judgment. I've seen nothing to suggest Mr B was given a guarantee as to what the returns would be on his policies. And I'm not persuaded that Aviva's non-payment of reversionary bonuses is evidence of its mismanagement of the fund.

Reorganisation bonus

Aviva's change to the reorganisation bonus appears to be the issue Mr B is most concerned about. Mr B believes the removal of the original reorganisation bonus announced in 2001 will have a negative impact on the maturity values of his policies and doesn't understand how Aviva can take this bonus away when it says that once awarded, bonuses cannot be removed.

I think it would be helpful for Mr B if I briefly set out some of the key points relating to this issue.

Firstly, the reorganisation bonus announced in 2001 came about following a financial reorganisation of the Aviva with-profits funds. As Aviva told Mr B in its final response letter in October 2021, the reorganisation bonus rates were not guaranteed. So, while I can see Mr B

believes the rates should have stayed the same from 2001 until his policies matured, this was not the case. The terms of the bonus did not provide for any guarantees of this nature. In the same way the annual and terminal bonus rates could go down as well as up, so could the reorganisation bonus rate.

Secondly, I think Mr B has misunderstood the point about awarded bonuses not being taken away. I think there is an important point to make about the terminology here. An awarded bonus is different from declaring or announcing a bonus. An awarded bonus is one that it is applied to a policy. And once applied, Aviva is right to say that it cannot be taken away. But in the case of the 2001 reorganisation bonus, the bonus rates Mr B was sent over the years with his bonus statements were the rates Aviva announced or declared for the relevant period. But this bonus was only applied upon surrender or maturity of a policy. Because neither of these things happened in Mr B's case, the bonus had not been awarded or added in his case.

In 2022, Aviva merged its with-profits funds and it took the decision to change the way the reorganisation bonus was paid. Previously, the reorganisation bonus was inclusive of final bonus. This is because, as I said above, it was added at the point of claim – i.e. surrender or maturity. From January 2023, it took the decision to award / add a one-off reorganisation bonus. And this is what Mr B received. By adding the bonus at this stage it increased the guaranteed benefits of Mr B's policies. Aviva explained that, while the amount of the one-off bonus applied was less than the reorganisation bonus shown in his 2022 yearly statement, a final or terminal bonus will be added at the point of claim. And this will be made on Mr B's guaranteed benefits, which now includes the reorganisation bonus. Aviva says this means the overall value of the reorganisation bonus will therefore be broadly the same. And I can see that an independent actuary report commissioned as a result of the proposed fund merger concluded that the impact of the merger on pay-outs was not expected to be materially adverse.

So, I don't think Aviva has done anything wrong here or acted unfairly or unreasonably. I'm satisfied Aviva has not taken away any bonuses previously awarded to Mr B's policies, and despite what Mr B says, I don't think he has lost out as a result of Aviva's actions.

Discrepancy with terminal bonus information provided by Aviva

Like the Investigator, I've looked at the historic terminal bonus information Aviva provided Mr B in March 2022 and compared this to a number of Mr B's annual bonus statements provided. And I too can find no error. I think it's likely that, as the Investigator explained to Mr B, the reason he believed the information was wrong was because he was referring to the wrong 'term gone' column – an important part in interpreting which terminal bonus rate applies to which policy. But I also agree with the Investigator that, even if the information Aviva provided was wrong (which for the avoidance of doubt I do not) the rates provided were historic. And because Mr B's policies remain live, they don't apply to him. So he hasn't been detrimentally impacted in any event.

Customer service issues

Aviva has explained that its telephone helpline is available to all its policyholders and that general policy information can be provided here. But it says that where more complex information is requested, a separate team is asked to provide it. I don't think it is unreasonable for Aviva to have a separate team to deal with more complex queries such as

the information Mr B requested about the 2001 cash payments he received for example. The information Mr B asked for was from a long time ago and it's not reasonable to expect a business to retain things indefinitely. In this case Aviva required actuarial support to provide Mr B with the information he needed, so I think it is reasonable to expect this would take longer to provide.

But it does appear from what Mr B has described that he experienced some problems getting the information he needed about his policies, particularly early on in his enquiries. And this appears, at least in part, to have been due to the age of his policies. So, I think Mr B was inconvenienced by this and received a lower level of service than he should reasonably have expected. I can see the Investigator recommended an award of £100 in recognition of this. And I think this is fair in all the circumstances.

Overall, while I don't uphold Mr B's complaint in relation to the points he has raised about bonus rates, the removal of the original reorganisation bonus or the terminal bonus information he was sent in March 2022, I do think he experienced a lower level of customer service than he should have expected. So, for the reasons above, I think an award of £100 is a fair way to settle this complaint.

Putting things right

Aviva should pay Mr B £100 for the distress and inconvenience caused.

My final decision

My final decision is that I uphold this complaint in part. Aviva Life & Pensions UK Limited should pay Mr B £100. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 May 2024.

Paul Featherstone

Ombudsman