

The complaint

Mrs M complains that Aviva Life and Pensions UK Limited ('Aviva') failed to inform her of when the with profits bonus rates were being reviewed on her pension plan. She says that Aviva's failure to advise her when the review was undertaken meant that she wasn't placed in an informed position about the timing of her pension switch.

Mrs M would now like Aviva to recompense her for the c£22,700 she says she's missed out on as a consequence of the bonus rate being reduced on her pension.

What happened

In December 1995, Mrs M took out an Executive Pension Plan with a business that was subsequently absorbed by Aviva. Her monies were invested in a with profits fund.

In November 2022, Mrs M telephoned Aviva to explain that she wanted to move her pension into a drawdown arrangement with another provider and take her tax-free lump sum. Aviva issued a transfer pack to Mrs M shortly after the call; that pack stated the pension had a transfer value of £573,402 which included a final, non-guaranteed bonus. The following month, Mrs M had a further telephone discussion with Aviva where she explained that she wished to proceed with the transfer. Mrs M sent her signed transfer form to Aviva on 30 January 2023 and the following month, Aviva sent funds totalling £550,710 to her new pension plan which represented the full value of her plan.

Confused by the differing amounts, Mrs M contacted Aviva to understand why she'd received a lesser amount than she was originally expecting. Aviva explained to Mrs M that since their original conversation with her in November 2022, they subsequently reviewed their rates and that resulted in a decision being made to reduce the bonuses that were being applied to policies.

Mrs M decided to formally complain to Aviva. In summary, she said that when she was considering transferring the benefits of her policy, she felt that it was Aviva's duty of care to inform her of when they were next reviewing the bonus rates and the risks involved, as this would have made an impact on her decision making. She went on to say that she would have pushed the transfer through as a matter of urgency had she known the bonus rates were under review. Mrs M said that she wasn't able to make an informed decision due to Aviva withholding information on the bonus rate changes, resulting in less money being received into her new policy.

After reviewing Mrs M's complaint, Aviva concluded they were satisfied they'd done nothing wrong. They also said, in summary, that they had made Mrs M aware at each opportunity that the values they quoted are not guaranteed. Aviva also explained that the decision to change the final bonus either in an upward or downward trend is made by their with profit fund governance team and is extremely sensitive information and only shared with Aviva staff and customers once the changes are made. Aviva went on to say that had they

informed Mrs M, or any customer, before they changed the rates, this would be classed as playing the market and as such, she would effectively be benefiting from inside information.

Mrs M was unhappy with Aviva's response, so she referred her complaint to this service. In summary, she repeated the same concerns and those were that she didn't think Aviva had been transparent enough about the bonus process and had they informed her of when the rates were under review during her initial conversation with them, she'd have asked them to speed up the exit process so as to avoid the risk of rates being revised downwards.

The complaint was then considered by one of our Investigators. He concluded that Aviva hadn't treated Mrs M unfairly because from what he'd seen of the documentation that had been issued, Aviva had made it clear that any amounts quoted weren't guaranteed and were subject to change. In addition, our Investigator concluded that he didn't believe Aviva were under any obligation to notify Mrs M of when they were reviewing their bonus rates.

Unhappy with that outcome, Mrs M then asked the Investigator to pass the case to an Ombudsman 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.

I have summarised this complaint in less detail than Mrs M has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. 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. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mrs M and Aviva in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm not upholding Mrs M's complaint and that's because in order to do so, I would need to find that something has gone wrong and that she has lost out as a result. But, having carefully considered the points Mrs M has made regarding Aviva's failure to highlight that the bonus on her plan was under review, I agree with the Investigator and for broadly the same reasons.

Whilst I appreciate Mrs M is likely to be disappointed by my decision, the level, nature and timing 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.

But, 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 the 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.

The amount of bonuses 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 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 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 which I've already mentioned above. However, it is not the role of this service to audit those decisions and assess the level of the bonus Aviva has awarded Mrs M; the responsibility for auditing Aviva falls on the regulator. It's important to recognise that in this instance, whilst the level of bonus that Mrs M received on final transfer (in February 2023) was lower than that originally illustrated (in November 2022), equally, the opposite may have occurred and it's entirely plausible that she could have received a higher, rather than lower bonus than that originally quoted.

Mrs M has stated that had she known in November 2022 (at the point of her original call with Aviva) that they were in the process of reviewing the bonuses they offered to customers, she'd have sped up the switch process and asked for a telephone appointment sooner than December 2022 – Mrs M says that she would have returned the paperwork to Aviva before January 2023. But, having looked at the paperwork that Aviva sent to Mrs M, whilst they've not indicated that bonus rates were under review, they have made clear (on page one) on the 23 November 2022 letter that they issued to her that the plan value of £573,402 is "only a guide and your actual plan value when you retire may be different. Plan

values can go down as well as up and are not guaranteed". Aviva's subsequent letter in January 2023 also stated "the transfer value is not guaranteed, and we will recalculate it on receipt of all our requirements".

So even setting aside bonus rates, I'm satisfied that Aviva made clear that the £573,402 was only a snapshot of the plan's value on that particular day and what Mrs M would ultimately end up with could be different. So, in light of the November 2022 warning, had Mrs M wished to lock down the value of her pension and avoid any subsequent movements, she could have asked Aviva for an earlier appointment to expedite the switch process, but she chose not to.

It's important to remember that 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. Aviva have already acknowledged the returns will vary every year and just because a low or no bonus is paid in one year, it doesn't necessarily mean that'll be the same in the following years. I've looked at the available paperwork from when Mrs M's plan was taken out in 1995 with General Accident. The literature doesn't provide any warranty that a bonus would be applied to the plan; in fact, the literature covering bonus rates specifically states "future bonus rates cannot be predicted or guaranteed as they depend on future profits", and subsequent literature (for example – the statements that Aviva sent to Mrs M in January 2016 and March 2019) covering bonus rates is equally as transparent, conveying the same message, so it's clear to me that such payments are at the discretion of Aviva and there's no certainty of what they might be.

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 Aviva is listed on the stock market and has shareholders. As such, just because Aviva didn't tell Mrs M that a bonus review was likely taking place, I can't conclude that they've done something wrong by failing to inform her of that, particularly in light of the other evidence that I've seen, which makes clear that any plan values quoted are only snapshots in time.

For all of these reasons I've set out above, I'm unable to uphold Mrs M's complaint.

My final decision

I do not uphold the complaint and won't be asking Aviva Life and Pensions UK Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 10 April 2025.

Simon Fox
Ombudsman