

## The complaint

Mr S complains that the final bonus which will be applied to the with-profits pension plan he holds with Aviva Life & Pensions UK Limited (Aviva) has reduced significantly over the previous few years. He would like to understand the reason behind this and would like the investment growth rate to be reviewed for the years his plan suffered “*stagnant returns*.”

## What happened

I understand Mr S first took out a pension policy with Norwich Union which, over the years, has now come under the administration of Aviva. This meant that the with-profits fund in which Mr S’ pension was invested became a “sub-fund” under Aviva’s management and by 2019 it announced that particular fund would be closed to new business.

I understand that in 2020 Mr S complained about the poor performance of the with-profits fund and received a response from Aviva. But by 2024 Mr S remained unhappy with the fund’s performance and complained again. In particular he noted that the “double digit” final bonus returns of previous years had disappeared, and that since 2018 the returns had reduced considerably – which he thought may have been caused by the effect of “smoothing” returns during those years. He wanted to know how the final bonus was calculated and why it had fallen so considerably in recent years.

Aviva explained that Mr S’ plan consists of investment in two with-profit funds. Regular (annual) bonuses are added to the plan, and these can’t be taken away. But the final bonus, which *may* be paid in addition to regular bonuses, is dependent on investment performance and may be reduced each year in line with that performance. It explained that it used a process called smoothing to regulate the effects of volatility and ensure the final bonus isn’t “*too adversely*” affected at each review of its rates. So it didn’t think it had made any errors in looking after Mr S’ investment.

Mr S remained unhappy with Aviva’s explanation, so he brought his complaint to us where one of our investigators looked into the matter. He didn’t think the complaint should be upheld making the following points:

- We would usually take the approach that poor investment performance isn’t sufficient reason to uphold a complaint as, while it can be distressing for consumers, it isn’t the fault of a provider and is usually due to market forces and conditions.
- We aren’t able to tell a business what funds it should use and invest in and would take the view that consumers can switch funds or providers if they are unhappy with their plan’s performance.
- We don’t have the resources to carry out the complex actuarial calculations and analysis to explain how a final bonus works. But he felt that Aviva’s explanations were clear and concise and was unable to provide further clarification.
- But there was no evidence to support the claim that a final bonus was guaranteed and in any case with-profit funds are closely monitored and any concerns about Aviva’s with-profit fund would have been picked up previously by the regulator. In

addition Aviva is required to publish its Principles and Practices of Financial Management (PPFM) around with-profit funds– which it has done.

- He noted Mr S' concern that the use of final bonus "smoothing" had affected the overall value of his plan but thought that market "events" since 2020 had a significant effect on investments generally. He hadn't seen any evidence to support the idea that Aviva had mismanaged the funds or affected the final bonus that might be applied.
- He thought it was coincidental that, following Mr S' complaint about the investment performance, the final bonus increased. He hadn't seen any evidence to link the two events.

Mr S didn't agree. He said he had discovered some new information which meant we hadn't satisfied his concerns around bonus rates. He said he'd found a letter from Aviva noting that his fund would be closed to new business from June 2019. He said the letter didn't set out any disadvantages of this course of action, but he had found further information which stated that, *"when a with-profits fund closes, policyholders can face potential risks and changes, loss of bonus rates, potential for lower returns, and the need for a run-off plan to distribute inherited assets fairly over time."* He said had he been made aware of this information in 2019 he would have switched out of the fund at that time and, looking at his annual pension statements since 2006, thought this supported his view that bonuses had declined significantly from 2018/2019.

Aviva told the investigator that it had provided Mr S with the letter about the fund closure to new business in 2019 as it was obliged to do. But it wasn't able to provide further information about any "potential" detriments of fund closures because it wasn't able to make guarantees about the performance of any of its funds. And to have provided this information could be seen by the regulator to be "implied advice" which it wasn't permitted to do. It also noted that Mr S had complained previously about the with-profits fund in 2020 and following the pension statements which were provided each subsequent year would have been able to switch to another fund – free of charge – at any time.

Mr S then said that he had begun the process of transferring his plan to another provider and would like the outcome of the transfer – with any associated issues which may occur, to be included in his complaint. He asked for his complaint to be referred to an ombudsman – so it's been passed to me to review.

### **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 I've reached the same conclusion as the investigator. I can understand Mr S' disappointment with the performance of his with-profits plan and I have some sympathy for his position which has now led him to transfer his pension elsewhere. But I don't think Aviva has done anything wrong here – so I'll explain my reasons.

The crux of Mr S' complaint here is that since around 2018 the previous bonus rate declarations haven't been sustained and have fallen dramatically in recent years and are now "stagnant."

He believes the process of "smoothing" returns, a practice used by providers to even out variations in performance, has caused the lower bonus rate declarations. This smoothing process is explained in Aviva's "with-profits sub-fund and investment summary" guide which says:

*"The amount you get back will depend on the amount you invest, plus:*

- *how the Sub-fund has performed during the time you've invested with us*
- *the way we apply the smoothing process (this is explained on page 7)"*

Page seven states, *"over time the value of the assets held by the sub fund will rise and fall. We even out these variations in performance through changes to the bonus rates that apply, and typically this occurs twice a year. This is known as smoothing."*

*In contrast, the unsrnoothed Sub-Fund value changes each day as the value of the assets goes up and down."*

So Mr S is right to suggest that smoothing returns has affected his final bonus, not for the reasons he has suggested to reduce his returns, but to ensure fairness to all policyholders by using profits from previous years to pay a smaller (or even no) bonus. Aviva can't simply increase the bonus in any current year without considering the impact on future years.

Turning to the overall performance of the fund we wouldn't usually uphold a complaint due to perceived "poor performance" because the very nature of any investment is that it can fall and rise in value. In respect of with-profit funds, while annual bonuses which are applied to a plan can't be taken away, a final bonus – which is the subject of Mr S' complaint here – may also be added at retirement, but this isn't guaranteed in advance. Aviva's same "with-profits sub-fund and investment summary" sets this out. *"Final bonus rates aim to pay the balance between the regular bonus already added and the performance of the sub-fund over the whole period of your investment. This makes sure that you get a fair share of the return your investment has earned.... We normally review final bonus rates twice a year. However, we may review them more frequently if there are large changes in investment markets. Final bonus rates can change at any time, aren't guaranteed and could be zero."*

So I can't reasonably say that Aviva has done anything wrong here. But I would expect Aviva to have provided Mr S with a reasonable explanation of why its bonus rates were affected in the years he's complained about. I won't replay Aviva's response to Mr S in this case, but I'm satisfied that it provided a reasonable explanation of how it declares its bonuses and the reasons, particularly from 2020 onwards, which have adversely affected its performance and led to lower bonus declarations.

But in any case the management of a with-profits fund is closely monitored by the regulator and Aviva is required to publish a document called "Principles and Practices of Financial Management" (PPFM) which explains how it manages its with-profits fund. This also sets out how policy values are calculated, and its practices in relation to declaring regular and final bonuses. Aviva has published its PPFM and, as I've said previously this activity is closely monitored by the regulator. I'm not aware that the regulator has voiced any concerns about the way Aviva manages its with-profit funds.

Mr S subsequently found the letter that Aviva sent him in 2019 which explained that the fund he was invested in was no longer open to new business. He said this letter didn't suggest there were any downsides or ramifications of such an action, but he's also found other available information about "closed" funds which he says suggest that when a fund closes *"policyholders can face potential risks and changes, loss of bonus rates, potential for lower returns, and the need for a run-off plan to distribute inherited assets fairly over time."* I can understand Mr S' train of thought here and I've seen a number of such resources about the potential risks to "closed" funds from a quick internet search myself. But they are only *potential* risks around these type of investments in the same way that there are risks to any form of investments. The regulator's handbook sets out what it expects to see when firms have "run-off" plans for with-profits funds. It also states that any significant charges to or departures from a plan are likely to trigger obligations to notify the regulator. I've seen no

evidence to suggest that such changes or departures have occurred from any run-off plans that might have been set up.

Aviva was obliged to let Mr S know of the closure of his fund to new business and that decision was a commercial decision that Aviva was free to make. But it wasn't obliged to set out the risks and changes that might occur, only to confirm that the fund would continue to be managed in the same way and according to the original terms and conditions. As Aviva has stated publishing these risks might be seen as "implied advice" to move away from the fund, although this option was always available to Mr S in any case. He could have switched out of the with-profits fund if he was dissatisfied with its performance which he first identified in his complaint of 2020.

I understand the link Mr S is making between the two pieces of information but there's no evidence to suggest that issues with closing the with-profits sub fund were the reason that final bonus declarations fell in the last few years. Mr S had already complained about falling bonus rates in 2020 so I don't think it's reasonable to suggest that closing the fund to new business in mid-2019 could have had such an immediate effect. Aviva has given Mr S reasons for the recent lower bonus declarations, and I'm satisfied these were more than likely the cause of the fall in the with-profits fund performance.

Indeed Mr S told us that he was "suspicious" of the fact that his final bonus increased when it was next declared following his complaint. I've seen no evidence to suggest a link between these events, but I think it further supports the idea that it was some years of difficult investment performance due to world events, and the effects of smoothing which best explain the rises and falls in the final bonus declarations on his plan.

Mr S told us that he was going to transfer his pension plan to a new provider as a result of his complaint. He wanted us to consider the outcome of that transfer, and if he suffered any issues during the process, as a part of *this* complaint. Mr S is free to transfer his plan elsewhere and I hope that transfer had been completed as he would have expected. But if it wasn't, or hasn't yet been finalised, then he should contact Aviva and raise this as a new complaint in the first instance.

### **My final decision**

For the reasons that I've given I don't uphold Mr S' complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 July 2025.

Keith Lawrence  
**Ombudsman**