

complaint

Mr H is unhappy that Aviva Life & Pensions UK Limited (Aviva) told him he could take his pension benefits at age 55 but has now said he can't take it until age 65.

background

Mr H transferred his pension benefits from his employer's pension scheme into a section 32 buy-out plan with Aviva in November 2001. The normal retirement date for the plan was set at May 2025, when Mr H turned 65.

In June 2014 Mr H asked Aviva when he could take his benefits. Aviva said his normal retirement date was age 60; but he could take benefits from 55.

In response to Mr H's request for a retirement quote in March 2015 Aviva said that it couldn't pay his pension benefits before age 65 as there weren't enough funds to cover the cost of the Guaranteed Minimum Pension (GMP).

Mr H also asked Aviva if he could take his pension as a lump sum under the new Government rules. Aviva initially told Mr H that he would have the option of taking his pension as a lump sum after April 2015. But Aviva later explained that this wasn't right. It said that it couldn't pay him any benefits until age 65 as the cost of providing the GMP wasn't met.

Mr H complained to Aviva. Aviva didn't uphold his complaint explaining that it had to pay the GMP and could only pay benefits earlier if the cost of providing the GMP can be met at 65. As Mr H's fund wasn't big enough to cover this cost, Aviva couldn't pay benefits early.

But Aviva admitted that he'd been given incorrect information and offered him £250 for the inconvenience and stress this caused. Mr H didn't accept this offer and referred his complaint to this service.

An adjudicator investigated Mr H's complaint but didn't uphold it. She thought the amount offered was sufficient.

Mr H didn't agree. He said that the offer was less than what Aviva would earn in interest on his funds over the next 10 years and it didn't make up for the wrong information he'd been given over the past 15 years.

Aviva didn't comment further.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When Mr H's section 32 buy-out plan was set up Aviva agreed to give him a guaranteed minimum pension (GMP) at 65. A GMP is a valuable benefit; one that pension providers like Aviva cannot disregard. It will provide Mr H a guaranteed income at 65. This is true even if the pension fund isn't enough to pay for it. In these circumstances, Aviva would have to make up any shortfall.

Mr H is not yet 65 and currently his fund doesn't cover the cost of the GMP. So I don't think Aviva has acted unreasonably in declining Mr H's request to take benefits.

I know Mr H is upset and feels that Aviva should be held to what it's told him in the past. Specifically, Mr H says he was told by Aviva over the phone that he could take his pension benefits at 55. Mr H has also referred to letters from Aviva that seem to indicate that his benefits would be payable from age 55. I've looked at the letters provided. They appear to be annual statements sent to Mr H about his pension fund. Although some of these letters do say that benefits can be taken after age 55, each letter also says "*Taking benefits earlier may be possible assuming that the fund value is sufficient to provide the GMP at your State Pension Age*".

Understandably Mr H is unhappy that Aviva's said it can't pay his pension benefits until he turns 65, especially since he was told previously (but in error) that he could take these benefits at 55. Having considered everything that I've been provided, it's clear that Aviva didn't always give Mr H the right information, especially over the phone. And I've no doubt that Mr H was disappointed to find out he couldn't take his benefits when he wished. His expectations had been raised. But Aviva has apologised for its mistakes and poor communication and offered Mr H £250 for any stress and inconvenience he's suffered as a result.

I think this offer, which remains open, is fair and reasonable given the circumstances of Mr H's complaint.

Mr H has also commented that he was misled when he took out the policy about the benefits of the Section 32 plan, thinking for the past 15 years that he could take his pension benefits at 55. But I don't think the available evidence – specifically the contract terms in this instance - supports the position that Aviva told him at the start of his plan that this was a certainty. There was the possibility that benefits could be paid before the state pension age if the value of the fund was sufficient to pay the GMP earlier. But unfortunately in this instance that isn't the case.

my final decision

I don't uphold Mr H's complaint. But I think Aviva Life & Pensions UK Limited's offer to pay Mr H the £250 is reasonable. Although I know Mr H is disappointed with the offer, I leave it to him to decide whether to accept this or not.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 4 January 2016.

Jennifer Wood
ombudsman