

Ombudsman's Determination

Applicant	Mr S
Scheme	Aviva Personal Pension Plan (the Plan)
Respondent	Aviva

Outcome

1. I do not uphold Mr S' complaint and no further action is required by Aviva.

Complaint summary

2. Mr S complained that Aviva told him that his regular annual statements did not include a final bonus, and that a final bonus would be added when his policy matured. However, when he came to take his benefits, he was informed that the final bonus was already included in his annual statements.
3. Mr S asked to receive the final bonus he was expecting, amounting to approximately £40,000.

Background information, including submissions from the parties

4. Mr S is represented by Mr N (**the Representative**).
5. In February 1987, Mr S set up a regular premium with profits personal pension policy (**the Policy**) with Friends Provident. The Policy provided a guaranteed annuity of £6,987.85 per annum, plus profits, payable from June 2024. Mr S could elect to start receiving a lower guaranteed annuity from June 2014.
6. Aviva subsequently took over the Policy from Friends Provident.
7. Mr S received annual statements for the Policy from Aviva (**the Policy Statements**). From 2012, the Policy Statements included the following information:-
 - a) The guaranteed amount for bonuses showed a guaranteed annuity of £6,987.85 per annum.
 - b) Bonuses added in previous years showed bonuses of £6,276.12 per annum.
 - c) There were no new bonuses added during the previous year.

- d) The total of guaranteed amounts plus all bonuses was £13,263.97 per annum, which was a) + b). A footnote stated the following:

“If your plan remains in force unaltered this is the minimum amount we’ll pay at the chosen retirement date. If you retire early or transfer to another provider the amount we pay may be lower than this.”

- e) The bonus rate on the guaranteed amount was 0%.

- f) The bonus rate on existing bonuses was 0%.

- g) The Policy’s current value. A footnote stated the following:

“This is the value at [date of statement]. The value may go up or down depending on investment conditions and may be different at a later date.”

- h) Another footnote stated the following:

“We’ve not shown the final bonus rate on the statement because investment conditions mean the figure could change during the year.”

8. The Representative said that Mr S recalled telephoning Aviva (**the Telephone Call**) to discuss his benefits, including the final bonus, soon after receiving the Policy Statement dated 12 July 2017.
9. On 20 June 2018, the 2017 Policy Statement stated that the Policy’s value was £100,049.95.
10. On 11 October 2018, Aviva wrote to Mr S and provided the following information about the Policy (**the October 2018 Letter**):-
- The current transfer value was £97,971.35.
 - The following notes were included about the transfer value (**the Transfer Notes**):
 - it was not guaranteed and could go down or up depending on investment performance;
 - it was the amount that would be paid if the Policy was transferred to another provider; and
 - it was inclusive of the current final bonus.
 - The projected value on June 2021, assuming medium returns, was £101,000.
11. On 25 September 2020, following a request from Mr S, Aviva informed him that the Policy’s transfer value was £108,928.03 (**the September 2020 Letter**). The September 2020 Letter included the Transfer Notes.

12. On 15 July 2022, the Policy's transfer value was £128,696.17.
13. On 22 August 2022, following a request from the Representative, Aviva provided the following information about the Policy:-
 - The transfer value was £128,780.48, and included a sum assured of £45,907.04, a final bonus of £41,230.57 and a declared bonus of £41,642.87.
 - The projected value, assuming medium returns to June 2024, was £133,000.
14. The Representative requested further information about the Policy.
15. On 14 November 2022, Aviva wrote to the Representative and said that the Policy's transfer value was £129,033.41.
16. On 16 November 2022, Aviva emailed the Representative and confirmed that all bonuses were included in the fund and transfer values.
17. On 28 November 2022, Aviva wrote to the Representative and said that the Policy's transfer value was £129,033.37. It also enclosed a copy of the Plan's Policy Conditions (**the Policy Conditions**). The Policy Conditions did not mention a final bonus.
18. On 12 December 2022, Aviva sent the Representative a breakdown of the Policy's bonuses. The transfer value was £129,117.68, and included a sum assured of £45,810.20, a final bonus of £41,860.98 and a declared bonus of £41,446.51.
19. In January 2023, the Representative complained to Aviva about the difficulty he was experiencing in obtaining information about with profits, and that the Policy Statements were misleading about final bonuses.
20. On 19 January 2023, Aviva replied to the Representative's complaint with the following points:-
 - It had given Mr S written confirmation that the final bonus was included in its valuations.
 - It could not find where it had told Mr S that the final bonus was not included in the valuations it had provided him. All the documents and emails clearly stated the final bonus was included in its valuations.
 - It agreed that some of the wording in the Policy Statements could have been worded better. It was difficult to write the information in simple terms due to the type of pension product. For this reason, it recommended customers obtained independent financial advice, and it paid Mr S £100.

- It was satisfied that it had provided sufficient information to confirm that there would be no further bonuses due on the fund valuations shown in Policy Statements.
21. The Representative said that during telephone calls between Mr S and Aviva, Mr S was told that the Policy Statements showed the current valuation, and that the final bonus would only be added at retirement. After receiving his 2021 Policy Statement, during a telephone call, the Representative said that Aviva told Mr S that his final bonus would be in the region of £41,000, and this would be added to the Policy at retirement.
22. On 19 January 2023, the Representative emailed Aviva with the following points:-
- The term ‘final bonus rate’ in the footnotes in the Policy Statements was at best misleading to a lay person.
 - He did not accept that the final bonus was included in the Policy Statements. There was no reason not to disclose the final bonus rate on the Policy Statements.
 - Both he and Mr S had been told orally that the final bonus would only be added on maturity. So, he believed the Policy would increase by approximately £41,000 when Mr S retired.
 - Aviva had failed to act in a competent and professional manner, had seriously misled Mr S over many years, and provided inaccurate information. This led to Mr S being significantly worse off than he was led to believe.
 - Mr S had recently been diagnosed Motor Neurone Disease (**MND**) and had limited life expectancy.
23. Following the complaint being referred to The Pensions Ombudsman (**TPO**), the Representative and Aviva made further submissions that have been summarised below.
24. The Representative’s further submissions:-
- Although Mr S was extremely weak from MND, he was able to recall the Telephone Call he had with an Aviva representative. He was not able to remember the exact date, but he said that it took place soon after he received the 2017 Policy Statement. The Aviva representative told Mr S that the Policy was doing very well, and that the final bonus, in the region of £41,000, would only be added when he retired. He was told that it was a “great” idea for him to continue contributing to the Policy, as the contributions would also receive bonuses.
 - The representative should not have told Mr S that it was a “great” idea to continue contributing to the Policy, as this constituted advice. Mr S should have been able to rely on the information he was told during the telephone calls.

- Aviva did not return his telephone calls. When telephoning Aviva, it was difficult to find someone who understood the with profits investment.
- Aviva should not be allowed to have untrained staff speak to clients.
- On multiple occasions he was sent standard terms and conditions, which he already had.
- In respect of the footnote about the final bonus rate in the Policy Statements, during one telephone call, he was told “I think you are correct as that’s what it says on the statement”.
- Mr S had continued to pay into the Policy for several years while receiving no annual bonuses. He had planned his retirement on the basis of receiving an additional £41,000.
- The Policy was described as a ‘Pension Mortgage’, and Mr S had always planned to use the extra funds to pay-off his mortgage. He had to use other funds to pay-off his mortgage.
- Aviva’s treatment of Mr S had caused him to suffer stress and Aviva had added to his health problems.

25. Aviva’s further submissions:-

- Its system automatically logged telephone calls.
- It had records of telephone calls with Mr S in August 2015 and October 2018, but not July 2017, the alleged date of the Telephone Call. So, there was no evidence of the Telephone Call taking place.
- The final bonus of £41,000 was stated in 2022, so it did not accept that the final bonus would also have been £41,000 in 2017.
- Aviva did not give customers advice. An independent financial adviser would know about how with profit funds operate and would be in a position to advise on the matter.

26. In March 2023, Aviva initially told the Representative that on retirement, Mr S could receive either his maximum Pension Commencement Lump Sum (**PCLS**), or no PCLS at all. Later, Aviva told the Representative that Mr S could choose how much PCLS he wanted to receive, up to the maximum. The Representative said that this was another example of Aviva providing false information and showed that its staff were incapable of understanding their own products.

Adjudicator's Opinion

27. Mr S' complaint was considered by one of our Adjudicators who concluded that there was no maladministration by Aviva. The Adjudicator's findings are summarised below:-

- The Policy Statements from 2012 showed the Policy's existing annuity bonus amounts and rates, and the total guaranteed annuity. The Policy Statements did not specify whether the fund value included a final bonus, but they refer to the value as being the current fund value. They stated that final bonus rates were not shown, as the figure could change during the year. The final bonus rate was referring to the percentage amount, not the actual value of the bonus. So, while the Policy Statements did not specifically say that the final bonus was included, there was nothing in them to suggest that the final bonus was excluded. The Adjudicator did not see any written evidence to suggest that any of the fund or transfer values provided to Mr S did not include a final bonus.
- Mr S said that when he telephoned Aviva after receiving the Policy Statement in July 2017, he was led to believe that the Policy Statement did not include a final bonus. Aviva did not have a record of this call, but it had records of two telephone calls from Mr S in August 2015 and October 2018.
- There was a gap of almost two years between the date Mr S remembered telephoning Aviva and the date of Aviva's record of the first call, but it was possible that Mr S misremembered the date of his telephone call. The Adjudicator accepted that Mr S telephoned Aviva, most likely in August 2015. As Aviva did not have recordings of the telephone calls, there was no evidence to confirm the details of what was discussed, or the reason for Mr S making the calls.
- Mr S said that he telephoned Aviva to ask about the final bonus and was told that it was not included in the valuations. This was corroborated by the Representative who said that he was given the same information when he telephoned Aviva on later occasions. However, there was insufficient evidence to conclude with certainty that Aviva provided Mr S with incorrect information during the telephone calls. The Adjudicator could not find that Aviva's actions in respect of the telephone calls amounted to maladministration.
- Even if Aviva had provided Mr S with incorrect information during the telephone calls in 2015 or 2017, it subsequently provided him with correct information in writing on several occasions. The first occasion was in October 2018, which was after the telephone call Mr S believed took place in July 2017. So, it was not reasonable for him to have relied on the information he may have been given during a telephone call.

- The Adjudicator accepted that there was a lack of clarity about the final bonus in the Policy Statements. But, as the information contained in the Policy Statements was strictly speaking correct, Aviva's actions in this respect also did not amount to maladministration.
28. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Both the Representative and Aviva provided comments in response to the Adjudicator's Opinion and these have been detailed below.
29. The Representative's comments are summarised below:-
- Aviva could not substantiate its defence. If it could not provide recordings of Mr S' telephone calls, the evidence about the calls was inadmissible and should be disregarded.
 - The Adjudicator's Opinion was contrary to the regulator's processes, where the benefit of doubt should be in the favour of the customer.
30. Aviva's comments are summarised below:-
- Due to the age of the two telephone calls conducted in August 2015 and October 2018, its system did not allow access to recordings.
 - A screenshot of a system note about the telephone call in October 2018 suggested that Mr S had requested information and a projected value of the Policy, which were subsequently sent to him.
31. I have considered the comments made by the Representative and Aviva, but they do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

32. Mr S complained that Aviva told him that his regular annual statements did not include a final bonus, and that a final bonus would be added when his policy matured. However, when he came to take his benefits, he was informed that the final bonus was already included in his annual statements.
33. None of the documents presented to me as evidence state that the final bonus is not included in the Policy's valuation. But the situation may not have been totally clear to Mr S at the time he received the Policy Statements, particularly as they say that final bonus rates are not shown. Aviva clarified the position on 11 October 2018, when it sent Mr S the October 2018 Letter and stated that the transfer value included the current final bonus. While I accept that Aviva could have made the position clearer in the Policy Statements, I do not find that this amounts to maladministration.

34. Mr S' complaint relies on whether he was given incorrect information about the final bonus when he telephoned Aviva prior to 11 October 2018. Mr S' recollection of at least one call in 2017 was that he was told the final bonus was not included in the valuation. Aviva does not have a record of this call but does have records of calls taking place in August 2015 and October 2018. Unfortunately, Aviva does not have recordings of any of the telephone calls. While I can take into account Mr S' recollection of events, without the support of evidence, such as a formal written note or recording made by either party, I cannot conclude that Aviva's actions amount to maladministration.
35. Even if Mr S had been told that the final bonus was not included in the valuation, he is still not entitled to receive a second final bonus. This is because the information, if it was given to him, would have been incorrect, and did not result in him incurring financial loss. Furthermore, Mr S was given correct information on 11 October 2018, which was over five years before the Policy's maturity, so he would still have had a reasonable period of time in which to decide whether to make additional pension arrangements.
36. The Representative refers to the regulator's processes in his response to the Adjudicator's Opinion, but this is not relevant to my decision. This is because I am an independent ombudsman with powers set out in the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, and my decision cannot be determined by the processes of another public body.
37. I do not uphold Mr S' complaint.

Dominic Harris

Pensions Ombudsman
6 May 2025