

Ombudsman's Determination

Applicant	Mr S
Scheme	Aviva Buy-Out Policy (the Policy) for the Copenhagen Re (UK) Pension and Life Assurance Scheme (the Scheme)
Respondent	Aviva

Outcome

1. Mr S' complaints against Aviva are partly upheld.
2. To put matters right, Aviva shall:
 - provide Mr S with further details of how the Pension, the Additional Policy Value, the Additional Pension and the Additional Tax Free Cash available to him from the Policy were calculated;
 - pay interest on the back payments of the Additional Pension and provide details of how this interest payment is calculated; and
 - award Mr S £3,000 (inclusive of the overall goodwill award of £1,600 already paid) in recognition of the severe distress and inconvenience which he has experienced dealing with this matter.

Complaint summary

3. Mr S' first complaint (CAS-14193-K6Y0) is that Aviva: (a) incorrectly reduced the guaranteed growth rate on the single contributions to the Policy from 3% to 1% per annum; and (b) did not apply the Guaranteed Annuity Rate (**GAR**) available from the Policy to 50% of the Policy Value.
4. His second complaint (CAS-47697-N3Q4) is that Aviva: (a) used the wrong surrender rate when calculating the pension and tax free cash available to him from the Policy in 2019; and (b) subsequently failed to explain clearly in 2021 how the additional retirement benefits payable to him were calculated.

Background information, including submissions from the parties

5. Mr S joined the Scheme on 1 January 1997 while working for Copenhagen Reinsurance Services Limited (**Copenhagen Re**). The Scheme was a non-contributory scheme.
6. Copenhagen Re paid both regular and single contributions into the Scheme for Mr S. Mr S paid Additional Voluntary Contributions (**AVCs**) into it.
7. These contributions were invested in a with profits fund offered by Friends Provident which is now part of Aviva.
8. In a fax dated 22 November 1999 to Copenhagen Re, Friends Provident said that:

“I enclose copies of the regular premiums securing rates for both normal retirement ages (**NRAs**) of 65 and 60...

I have passed your request for alteration of the NRA from 65 to 60...to the systems team. They will provide a direct response to you, which I understand will show secured figures before and after alteration.

I confirm that the alteration would have to be applied in respect of all benefits, including those secured by employee contributions.

I would like to point out that when using the alteration examples to assess the difference in benefits due to retirement age, all of the issues raised in our meeting will apply, e.g. mortality cover, ongoing securing rates for future premiums, guaranteed growth.

Further any payments made by single premium will be secured with 1% guaranteed growth as opposed to 3% for regular premiums...”
9. Mr S became a deferred member of the Scheme in July 2006. His Normal Retirement Date (**NRD**) is his 60th birthday in September 2024.
10. The Scheme was wound up on 5 July 2012. The benefits available to Mr S were secured through the Policy with Friends Provident on a direct obligation basis by Copenhagen Re in its capacity as the trustee of the Scheme (**the Trustee**).
11. Mr S says that:

“The Scheme carried 3% guaranteed annual returns + bonuses declared in December every calendar year and incorporated into the fund the following year 1st of July (the annual renewal date when the new contributions were paid in).

The other important feature of the Scheme was the GAR which started at 7.74% at early retirement age of 55 rising to 8.681% at NRA of 60. The GAR is applicable to 50% of the fund, while the remaining 50% minus any tax free lump sum up to 25% of the fund would attract the in house rate in force.”

12. In July 2018, Mr S notified Aviva that it had provided him with an incorrect figure for the Policy Value. Aviva replied on 19 July 2018 that: (a) the wrong value had been calculated by its computer system; and (b) it would suspend such calculations until the error was rectified.
13. There was subsequently a lengthy exchange of e-mails between Mr S and Aviva in which Mr S tried to establish the correct figures for the Policy Value, the projected retirement benefits and bonuses available to him from the Policy. The nature of this exchange meant that it was necessary for Aviva's actuarial team to complete complex manual calculations for Mr S which were shared with him.
14. In particular, Aviva provided Mr S in September 2018 with details of how the guaranteed growth rates had been applied to the contributions held in the Policy for him as shown in the table below.

Benefit name	Guarantee rate	Declared Bonus (£)	Interim bonus (£)	Total bonus (£)	Transfer value (£)
Employer Investment	3%	116,378.02	2,062.92	118,440.94	296,522.18
Employer Single Investment*	3%	6,947.64	77.95	7,025.59	11,107.66
Employer Single Investment**	1%	62,898.19	1,454.39	64,352.58	239,642.72
Employee Single Investment**	1%	11,046.94	248.53	11,295.47	41,260.29
Total as at 01/12/2017 (£)		197,270.79	3,843.79	201,114.58	588,532.85

*According to Aviva: (a) this relates to regular employer contributions paid from the date on which Mr S joined the Scheme, 1 January 1997, up to the Scheme renewal date of 1 July 1997; and (b) this was how mid-year joiners were dealt with at the time.

**These single contributions were paid after 1999.

15. Mr S says that it became apparent to him from Aviva's calculations that it had: (a) changed the guarantee rate from 3% to 1% per annum for almost 50% of the Policy Value; and (b) failed to apply the GAR correctly. He also says that when he challenged Aviva's figures, it refused to give him "any explanations and/or documentation to justify their actions."
16. In September 2018, Aviva responded to Mr S' complaint as follows:-

- It provided him with a wrong Policy Value because its computer system had calculated the recent bonuses applicable to the Policy incorrectly. This error also affected the standard projections shown on his annual statements.
- It acknowledged that this was the second time Mr S had reason to complain because of problems with its computer system and the information it had sent him.
- It agreed to manually calculate the benefits available to him from the Policy until the error was rectified to prevent “further confusion.” Regrettably, it also made some mistakes with these calculations.
- Its actuarial team was, however, now certain that its calculations were correct.
- It had hoped that by sharing its calculations with Mr S, he would be able to agree that the pension available to him from the Policy (**the Pension**) had been calculated correctly.
- It was sorry that they “did not manage to find this common ground.”
- “During our talks about how the various bonuses on your pension build up, you said you were sold this pension based on a promise of a flat 3% gain throughout the year. This is not a true representation of the calculations we use. Your pension’s guaranteed growth is a compound growth of 3% and 1% in your pension’s benefits at approximately 50/50. Investigating a potential mis-selling of this complaint is not something I am able to personally do, so I have referred to our mis-selling team...”
- It accepted that it had taken too long to provide Mr S with the correct information and awarded him £400 for the “trouble and upset” which it had caused him.

17. In December 2018, Aviva’s mis-selling team replied to Mr S that:-

- There was no evidence that Aviva had given him incorrect information about “the Policy guarantees” at any time. Furthermore, it had not changed them.
- If the actual Policy terms did not match “the information given at time of sale”, his complaint should be against whoever had given him this information.

18. Mr S subsequently complained to Aviva that his time had been wasted as his dispute was not about mis-selling. He said that it concerned the lack of documentation to support: (a) “the change of parameters” in the Policy; and (b) its technical team’s calculations of his benefits which he disagreed with.

19. Aviva responded as follows:

“You told us that you had been promised a better guaranteed rate of return than that being applied but didn’t have any documentation confirming this...

I appreciate you remain disappointed with your overriding concern about the guaranteed rates, but in terms of how the sales complaint was dealt with, I’m satisfied we dealt with this in a proper manner...”

20. On 30 December 2018, Mr S made a complaint against Aviva to the Financial Ombudsman Service (**FOS**).
21. FOS informed Mr S on 8 January 2019 that his complaint was outside its jurisdiction and referred it to The Pensions Ombudsman (**TPO**). Mr S’ complaint was initially assigned to a TPO Adviser in March 2019 to investigate.
22. In January 2019, Mr S informed Aviva that it had made another mistake calculating the projected benefits available to him from the Policy.
23. Aviva apologised to Mr S for this error on 10 January 2019 and informed him that: (a) it would arrange for the correct figures to be sent to him as soon as possible; (b) the mistake was attributable to human error; and (c) it had awarded him £100 for the distress and inconvenience caused as a gesture of goodwill.
24. Mr S complained to Aviva when it did not provide the revised figures in a timely manner. He also asked it for details on how to apply for the benefits available from the Policy if he retired.
25. In its e-mail dated 15 February 2019 to Mr S, Aviva conceded that it had taken too long to provide him with the requested information and offered him a further goodwill payment of £100. It also informed him of the steps which he should take in order to receive the retirement benefits available from the Policy.
26. On 17 February 2019, Mr S asked Aviva to check the figures which it had recently sent him because they were different to those which he calculated.
27. On 19 February 2019, Aviva replied that: (a) it had not made a mistake in its calculations and; (b) the discrepancies in the figures were caused by using different calculation methods. It also said that:

“In a retirement quote, the non-GAR monies would be reduced before the GAR (as you rightly calculated) to show a more accurate reflection of what a customer would receive at retirement.

However in a pensions multi quote, all values are simply reduced by 25% and the more complicated calculation is not used.”
28. In June 2019, Mr S informed Aviva that he had received quotations showing incorrect values for the benefits available from the Policy on retirement in September 2019.
29. Aviva replied by: (a) sending Mr S revised quotations; and (b) explaining how the figures shown on them had been calculated in a letter dated 8 July 2019.

30. Aviva sent Mr S another letter on 10 July 2019 which said:

“Thanks for taking the time to talk through your concerns with me over the last few weeks.

As we’ve discussed this at some length and you’re now satisfied the revised quotes and breakdowns provided. I’m just writing to confirm this and apologise for not putting this right sooner for you. I’ve highlighted these mistakes so we can work on further improvements.

I’m really sorry for all the trouble you’ve had with your quotes and for our delays in noticing where we’d gone wrong. To say sorry for this and in recognition of our mistakes, I’ve paid £500 into your bank account...

Our ombudsman team is still working on the issues highlighted in your previous complaint and I’ve made sure they have details of this also.

Now you have valid quotes, to apply for your pension you just need to complete the payment form and return this to us...”

31. Mr S completed the “Annuity payment form” (**the Form**) on 11 July 2019 and returned it to Aviva. He selected the option of a tax free cash sum of £157,068.88 plus a reduced gross pension of £32,267.52 per annum payable from his 55th birthday in September 2019.

32. The Form included the following proviso:

“Please remember that any annuities and tax free cash sums quoted are estimates and are not guaranteed. The amounts we pay could be more or less than the amount shown.”

33. In its e-mail dated 11 July 2019, Aviva informed the TPO Adviser that its position on Mr S’ complaint was as follows:

”No loss as it was all for retirement planning in the future and the customer repeatedly commented on how he is concerned about this being a problem when it comes time for him to retire.

Multiple trouble and upset payments were made due to the length of time taken, the problems with the documents and their clarity, and the mistakes with calculations.

Regarding the customer’s claim that we were unable to justify why the GAR applied to less than 50% ultimately there is no obligation for us to apply GAR to 50% of the Policy. The GAR applies to the portion of the pension depending on the contributions, so it having applied to “roughly 41%” makes sense.”

34. In his e-mail dated 12 July 2019, Mr S informed the TPO Adviser that:

“They (Aviva) have restored the split of the fund almost as 50/50 excluding the demutualisation bonus. That is, the amounts attracting the GAR and the amounts subject to their prevailing annuity rate for my profile. They have done that only following my referral to TPO while they were misleading me for more than two years in various communications.

However, they have not addressed the fact that they did not apply consistently the 3% annual guaranteed rate of return + annual bonuses across the fund. This has a very significant impact on the ultimate size of the fund and hence, the benefits to its policyholder.”

35. In October 2019, Aviva paid Mr S a gross pension from the Policy of £30,491.04, which was lower than the amount shown on the Form which was £32,267.52 per annum.

36. Mr S complained about the reduction to his Pension and Aviva responded in a letter dated 8 October 2019 as follows:

“I’m really sorry, but on finalising your claim and investigating your complaint, I’ve found that we’d made further mistakes in your July quotes and breakdown of 8th July. First of all, our actuarial team had been providing the incorrect amount of your fund benefitting from GAR... This of course distorted the figures in quotes prior to this, including our 8th July breakdown...”

- Your retirement claim has been calculated correctly and is made up as follows:
 - GAR Fund Value (**FV**) of £267,628.60, paid annuity of £20,974.08, with a rate of 12.76.
 - Annual Premium Hypothecated (**APH2**) FV of £365,155.20 + Demutualised Terminal Bonus (**DTB**) FV of £3,966.28.
 - We’ve paid 25% tax free cash (**TFC**) of £159,187.52¹ from these funds, leaving £209,933.96 to purchase APH2 annuity.
 - Remaining APH2 FV of £209,933.96 was costed against your health, as disclosed in our personal information form (**PIF**) to provide an annuity of £9,516.96 per annum and provided a higher rate than our standard APH2 rate on 14th September.
 - The achieved total annuity of £30,491.04 per annum² and £159,187.52 TFC.

¹ In his comments on the Adjudicator’s Opinion, Mr S said that Aviva paid £159,187.52 into his bank account on 14 September 2019 along with £45.40 interest for late payment of the TFC by 6 days.

²Mr S also said that Aviva paid him a slightly lower annuity of £30,405.08 per annum along with the TFC of £159,187.52. When asked to comment on the lower annuity figure by the Adjudicator, Aviva did not respond..

To say sorry for the trouble and upset we've caused, I've paid £300 into your bank account...

I've passed on full details of your complaint to our specialist team to make sure we avoid further such mistakes in the future.

Now your retirement claim is fully complete, I've also passed details of my findings here to our Ombudsman team so that they can add to your ongoing complaint with the TPO..."

37. Mr S complained to Aviva's senior management team. In its letter dated 30 October 2019, Aviva apologised to him for the errors made during the retirement process. It also said that:

- He should be able to rely on it to provide him with accurate information about his benefits and was dismayed to learn that it had let him down on several occasions.
- It was understandable that his trust in its ability to calculate his retirement income correctly was low.
- It had asked a senior actuary to review the calculations of the benefits available to him from the Policy. This actuary had assured it that they were correct.
- He was only entitled to receive the correct retirement benefits available from the Policy. It would not consequently be increasing his benefits to the higher amounts previously quoted to him by mistake.

38. On 14 December 2020, Aviva sent Mr S a letter which said:

"Internal checks have revealed that when the payment was made on your policy, the amount we paid you was too small. Please accept our apologies for this error.

It has been identified that an incorrect surrender rate was used to calculate the benefits due to you. The correct rate has now been used to recalculate the benefits and as a result additional money is now due.

An amount of £24,461.71 (**the Additional Policy Value**) has been used to purchase an additional pension for you. From the next payment your monthly pension will increase by £130.15 a month (**the Additional Pension**).

A cheque for the amount of £8,153.91 will follow this letter shortly. This is in respect of the tax free cash payment that was made to you (**the Additional Tax Free Cash**)..."

39. On 16 January 2021, Aviva informed Mr S that:

"As you took your retirement benefits prior to your NRD, this resulted in a penalty which was a charge on your policy. The penalty should not have

applied as Aviva...removed that penalty retrospectively back on 1st January 2017...”

40. Mr S complained and asked Aviva to provide him with: (a) “the full wording of the penalty clause and the equivalent wording of the cancellation”; and (b) documentation detailing “the cancellation decision with the dates clearly stated.” He also said that:

“May I remind you, when Aviva calculated the final value of my fund (which I dispute as seriously understated), there was no mention of the penalty and/or how it reduced its value. How did you come up with it now?”

Please provide explanations for the extra annuity you claim you bought me in the letter. What were the parameters of the annuity.”

41. In an e-mail dated 9 February 2021 to Aviva, Mr S said that he did not respond to its letter dated 30 October 2019 because it showed “the depth of ignorance” which Aviva had of insurance practices and law. He also said that:

“You cannot change the terms and conditions of the contract after the underwriter and the client had agreed terms without the consent of the policyholder. I accepted what they offered me in July 2019, signed and posted the documents, and they changed the benefits after the contract inception. If the underwriter got it wrong, tough...”

42. In his e-mail dated 15 February 2021 to Aviva, Mr S added:

“Having spent the greatest part of my career in the London Market holding positions of Chief Actuary to CEO with a number of Reinsurance companies, I am no stranger to management giving special incentives to staff and/or outsourcing run off outfits to minimise liabilities from non-core or legacy business.

Bearing in mind the constant refusal of AVIVA to supply answers to my questions concerning the calculation of my benefits and the corrections, I am growing inclined to believe that they are trying to screw the policyholders to maximise their benefits.

Please provide the information I requested as a matter of priority.”

43. On 22 February 2021, Aviva responded to Mr S’ questions as follows:

“There is no wording of a penalty clause; being a group scheme no individual policies would have been issued. The removal of the surrender penalty was a business decision made by Aviva but no policy endorsements or notifications were sent. Details of our cancellation decision and dates are company sensitive information, so we won’t be providing this information, however we’ve corrected your position to ensure you haven’t lost out and will consider and address your concerns in our complaint response.

With regards to the extra annuity we've bought. This has been worked out proportionately based on your original annuity.

Your original claim paid an annuity of £30,491.04 and we've used the additional £24,461.74 to purchase a further annuity. This has increased your monthly payments by £130.15 a month to an overall payment of £2,671.07, equivalent to £32,052.84 per annum."

44. Mr S was unhappy with Aviva's reply. In his e-mail dated 24 February 2021, he said:

"You argue that there is no wording which determines the surrender penalty...how do I know the amount is correct?

I believe that a cover up going on at your end concerning changes you made to the investments, amongst other things, of the scheme after the takeover of Friends Provident back in 2014.

As a result of your actions, the bonus on top of the guaranteed amounts of return of the fund collapsed and thus, damaged policyholders' interests.

The fact that you rushed to send extra benefits to me as stated in your letter dated 14th December 2020 is due to the enquiries raised by TPO the day before concerning my complaints...

I asked for the details of my annuity. You provided only the increase you implemented from January 2021. This falls far short from the explanations you should have provided because:

- 1) My policy provides for guarantee rates of return to the fund + annual bonuses. Hence the fund would have increased from September 2019 to January 2021.
- 2) My policy provides with GAR from the age of 55 in September 2019 rising with every year of age. Thus, higher annuity rates should apply compared to September 2019.

My calculations and analysis show that you should be paying me a monthly income of 3,159 gbp from February 2021 instead of 2,671.07.

The tax free lump sum you paid should have been much higher. However, you did not ask me whether I would like the lump sum or I wished a higher pension.

What you did instead, you rebase the calculations on the parameters you decided in September 2019 and calculated the amounts involved. For the record, I fully dispute those assumptions.

Let's assume for the moment what you did was correct. Then, you should have backdated the annuity payments back to September 2019. However, in your effort to avoid this liability which arose completely as your fault, you

pretended that the annuity becomes paid from 1st January 2021, saving this way the costs of additional payments and compensation for being late.”

45. In its letter dated 5 March 2021 to Mr S, Aviva said that:

“I want to apologise for what has happened and I can assure you this was a genuine error which we identified as part of a regular bonuses review and not intended to cause you any distress.

We’ve taken too long to identify our error. We’ve now corrected this and have paid you additional TFC and increased your annuity.

...I’ve calculated late interest on your additional TFC payment and annuity and have arranged a payment of £630.63 directly into your account.

The removal of the surrender penalty was a discretionary decision made by Aviva following the merger with Friends Life but no policy endorsements or notifications were issued. Unfortunately, the action to update the systems weren’t completed correctly, which has given rise to the additional amount.

In addition to the payment of late interest of £630.63, I’ve also considered the additional annuity payments that you haven’t received.

We’ve adjusted your annuity from January 2021, however you should have received an additional £130.15 per month from October 2019 so I’ve made a further payment of £1,952.25 in recognition of this.

To say sorry for the trouble and upset we’ve caused, I’ve also sent you a further £200...”

46. As part of the investigation into Mr S’ complaints by TPO, Aviva was asked to provide copies of documents for both the Scheme and the Policy including:

- the Scheme Trust Deed and Rules;
- any booklets, benefit statements and announcements about changes made to the Scheme benefit structure sent to Mr S;
- correspondence between Friends Provident and Copenhagen Re confirming: (a) the reduction to the guaranteed growth rate after 1999 from 3% to 1% per annum for single contributions, and (b) the changes made to the proportion of Mr S’ fund subject to the GAR;
- the Policy document issued to Mr S at the time of the winding up of the Scheme detailing his benefit entitlement; and
- the wind up policy showing what was agreed with Friends Provident on the guaranteed growth rates and the GAR.

47. There was an extensive exchange of e-mails but ultimately Aviva was only able to provide very limited documentation.

48. Aviva said:

“The original rules and terms etc would have been superseded when the Scheme wound up and benefits were obligated to the member, at that time a benefit statement would have been issued, however that would have not looked any different to those issued via the trustees (other than wording to contact Friends Provident rather than the trustees).

A letter would have been issued regarding the GAR rate change in 1999, this would have gone to the trustees, they should have informed the members but we couldn't say either way whether this would have happened.

Likewise, a letter would have been issued to the trustees regarding the underlying guarantee changing to 1% from 3%.

For both of these letters an actual letter won't be on the file as they were done as a bulk mail for all the schemes and back then we didn't keep scheme specific copies.”

49. Mr S has explained that he does not hold any documentation and by way of background said that:

“I would like to add that in those days (1996) we were only told in the employment offer letter that we were entitled to join a non-contributory pension scheme as a benefit. The guarantees of the scheme were communicated verbally.”

Adjudicator's Opinion

50. Both of Mr S' complaints were considered by one of our Adjudicators who concluded that further action was required by Aviva.

51. The Adjudicator's findings are summarised below:-

- There were a number of errors made by Aviva before and after Mr S took the Pension, and Aviva's actions amounted to maladministration.
- Mr S had been paid a total of £1,300³ in recognition of the distress and inconvenience caused to him by the maladministration identified. The Adjudicator felt this was reasonable given the circumstances of this case.
- The Adjudicator acknowledged that there was a lack of documentation available. She accepted that Aviva did not have copies of any of the letters relating to the

³ I have calculated the total value of the goodwill awards paid by Aviva between September 2018 and March 2021 to be £1,600.

change to the guarantees issued to the Trustee. However, this was often the case when letters were sent as part of a bulk mailing exercise and it was not unusual that individual letters were not kept on file. However, it would have been for the Trustee at the time to share these important changes with the members of the Scheme, including Mr S.

- The Adjudicator appreciated that Mr S had a number of queries and wanted Aviva to provide documentation in order to: (a) prove that the changes in the Scheme took place; and (b) demonstrate that the Policy Value and the Pension were correct. However, the Adjudicator's opinion was that the values seemed reasonable and the onus would be on Mr S to demonstrate why the calculations and values were incorrect.
- Mr S said he was entitled to certain guarantees but had not provided any documentation to demonstrate this was the case. He also stated that he was only given verbal assurances. The Adjudicator was unable to conclude that the calculations were wrong without any clear evidence to demonstrate that: (a) Mr S was entitled to a guaranteed return of 3% per annum on all the contributions paid into the Policy for him; and (b) the GAR was applied incorrectly.
- The removal of the surrender penalty was a commercial decision by Aviva and this was not something the TPO would interfere with. In any event as a result of the change Mr S received more pension and tax free cash, so the Adjudicator did not consider he had suffered a financial injustice as a result.
- Despite not agreeing with all aspects of Mr S' complaint the Adjudicator considered that Aviva should provide further details of how the Additional Policy Value, the Additional Pension and the Additional Tax Free Cash were calculated, taking into account that Mr S had a GAR under the Policy.
- The Adjudicator also considered that Aviva should award interest for late payment of the Additional Pension in line with what was paid in regard to the Additional Tax Free Cash. She also said that evidence of how the interest had been calculated should be supplied to Mr S by Aviva.

52. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S said that:-

- Aviva had failed to correctly apply the guaranteed growth rate of 3% per annum to the single contributions held in the Policy for him.
- He has calculated that: (a) the annuity available to him from the Policy secured in July 2019 was determined using an annuity rate of 6.848%; and (b) the actual annuity which Aviva purchased for him of £30,405.08 per annum was based on a lower annuity rate of 6.367%.
- If Aviva had used an annuity rate of 8.848%, he would have been paid an annuity of £32,702.76 per annum in October 2019.

- Aviva did not offer him a further goodwill award for this “admitted mistake”.
- After removing the surrender penalty (which he disputes), his annuity would have increased to £34,377.87 per annum.
- He has provided a spreadsheet showing the above calculations⁴.
- Aviva has demonstrated a lack of transparency around the surrender penalty.
- Aviva paid £45.40 interest for late payment by six days of the TFC, £159,187.52, into his bank account based on an interest rate of around 1.735%. If he had overdrawn his bank account by this amount, his bank would have charged him £295.93.
- The rate used by Aviva to calculate interest for all the late payments “should be closer to my bank’s overdraft rate and not the near zero one they assumed.”⁵
- He did not receive details of how the additional retirement benefits, including interest for late payment, had been calculated by Aviva.

53. Mr S submitted a copy of the Form showing the annuity rate which he had accepted.

54. He also supplied copies of a 2012 bonus statement entitled “Retirement Benefits Scheme Group With Profit Cashable Contracts” (**the Bonus Statement**) and a benefit statement as at 21 December 2012 (**the Benefit Statement**). In Mr S’ view, these statements “clearly demonstrate the annual guaranteed rate of return of 3% plus the annual distributed bonus from the with profits fund.”

55. The Bonus Statement said that:

“We are pleased to announce that a bonus of 2.25% per annum has been added to With Profits Cashable Contracts in the Friends Life FP With Profits Fund.

Regular Contributions

When added to the underlying guarantee of 3% per annum on regular contributions, this is equivalent to an underlying gross yield of 5.3175% per annum...”

56. The Benefit Statement showed that:

“Current bonus

⁴ When asked by the Adjudicator to comment on Mr S’ calculations and why it did not pay a further award to Mr S for distress and inconvenience, Aviva did not respond despite being given ample time to do so.

⁵ Aviva did not reply to the Adjudicator’s request for its comments on this statement made by Mr S by the specified deadline date.

Friends is currently paying regular bonuses of 3.5% per annum compound which, when added to the underlying guarantee gives an overall return of 6.6% per annum on regular contributions. Future bonuses cannot be guaranteed. This rate only applies to the accumulated retirement benefits fund. It does not apply to the DTB.”

57. Mr S also said that:

“Let’s assume now, for the sake of argument, that Aviva is right and the GAR was reduced from 3% to 1% from the July 1999 renewal onwards.

That is, only the July 1997 and July 1998 premiums paid in the Scheme, would qualify for the 3% GAR. Based on my salaries on the 1st of July each of these years, the total contributions paid by my employer would have been £8,775 + £9,652.50 = £18,427.50. It would be useful to explain how this component of the fund has grown to £296,522.18 as at 1/12/2017...⁶

It is very common when a company acquires undesired business...to put them in run off and try to cut off the liabilities. Hence, appropriate strategies will be adopted, with the main loser the policyholders. That is why I do not believe they cancel an existing surrender clause to increase their liabilities at the expense of the shareholders.”

58. The Adjudicator explained that any commercial decision by Aviva was not something the TPO would interfere with. It was the Adjudicator’s view that the outcome of his two complaints remained the same. However, she agreed that Aviva should clarify why it used a lower annuity rate of 6.367% instead of 6.848% when purchasing the Pension payable to Mr S in October 2019.

59. Mr S remained unhappy and considered that his complaint had not been looked at correctly. He said:-

- Aviva did not pay him the annuity which he originally bought. It also arbitrarily decided to “selectively apply the 3% guaranteed annual rate of return + annual bonuses to part of the fund”. In his view, his pension fund at age 55 should have been at least £100,000 larger and he could have purchased a better annuity.
- The Adjudicator mentioned that “adequate evidence is only the terms and conditions of the contract”. However, as neither he nor Aviva could have a copy to present, he considered that the extracts from the Bonus Statement and Benefit Statement should be considered a close proxy.
- The Adjudicator considered he should "shut up" as Aviva had paid him some extra money and its other actions were commercial decisions beyond the scope of The TPO’s investigation.

⁶ The Adjudicator asked Aviva for its comments on this statement made by Mr S but it failed to respond despite being given plenty of time to do so.

- It was obvious why Aviva did not bother to respond to the Adjudicator's Opinion as it clearly understood that the Adjudicator only aimed at it "winning".

60. I note the additional points raised by Mr S but I essentially agree with the Adjudicator's Opinion, except on the overall award paid by Aviva in respect of its maladministration for the way it managed Mr S' case. Aviva undoubtedly has caused Mr S severe distress and inconvenience dealing with this matter.

Ombudsman's decision

61. There is no dispute that the administrative service which Aviva provided Mr S over the years has been extremely poor. Aviva made a plethora of mistakes when calculating the Policy Value and the retirement benefits available to Mr S from the Policy. I consider that these errors clearly constitute maladministration on Aviva's part.

62. When Mr S brought to Aviva's attention its numerous mistakes, I note that it tried to take the appropriate remedial action in order to put him back in the position he would have been had they not been made.

63. However, I consider that Aviva had failed to do this in an efficient and timely manner. It is reasonable to expect that Aviva should have rectified these errors without requiring multiple attempts to do so in some cases.

64. Aviva told Mr S on a number of occasions that it had rectified its mistakes and was confident that its calculations of the benefits available to him from the Policy were correct. Regrettably, again and again, this transpired not to be the case.

65. Clearly Aviva was too slow in noticing that it had erroneously applied a surrender penalty when calculating the pension and tax free cash available to Mr S from the Policy on his retirement in September 2019. Aviva's failure resulted in it having to subsequently make further adjustments to Mr S' retirement benefits after they had been put into payment.

66. In light of the multitude of administrative errors, I can completely understand why Mr S is now sceptical that Aviva had: (a) correctly calculated the Policy Value; and (b) properly applied the GAR to it in order to determine the Pension and tax free cash available to him on his retirement.

67. Mr S has said he was given verbal assurances that: (a) all the contributions paid into the Policy for him would receive a guaranteed return of 3% per annum; and (b) the GAR would be applied to 50% of the Policy Value.

68. However, neither Mr S nor Aviva have been able to provide any indisputable documentation setting out the guarantees available under the Policy.

69. Mr S has submitted extracts from the Bonus Statement and Benefit Statement which he considers as clear evidence that the guaranteed annual rate of return of 3%

applied to all contributions paid into the Policy. However these statements only show that this rate was applicable to regular contributions. They did not explicitly state that it also applied to single contributions paid into the Policy.

70. Furthermore, the fax which Friends Provident sent on 22 November 1999, stated that if Copenhagen Re changed the NRA of the Scheme from 65 to 60, any future payments made by single contributions would be secured with “1% guaranteed growth as opposed to 3% for regular premiums”.
71. Mr S was an active member of the Scheme at the time this fax was sent. It is clear from the evidence that his NRA in the Scheme is 60. Presumably his NRA originally had been 65 and it was later changed to 60 by Copenhagen Re. If this presumption is correct, then I consider that the reduction to the guaranteed growth rate from 3% to 1% per annum for single contributions into the Policy after 1999, applied to Mr S.
72. I can only reach a finding on the evidence available. Without any unambiguous evidence of the guarantees promised or how the GAR should be applied, I am unable to direct Aviva to change its calculations of Mr S’ retirement benefits in the way he would wish.
73. Mr S says the annuity rate which Aviva used to calculate the Pension payable from October 2019 was lower than the one that he accepted in July 2019. However, Aviva has already explained in its letter dated 8 October 2019, why it had to reduce the Pension from £32,267.52 per annum, as quoted on the Form which Mr S completed, to £30,491.04 per annum. Aviva also provided full details of the complex calculation of the new Pension amount which involved the application of both a GAR and an enhanced ill health annuity rate to specific parts of the Policy Value.
74. Mr S contends that Aviva cannot reduce the retirement benefits available to him from those shown on the Form once he had signed and returned it. However, he was only entitled to the correct benefits available from the Policy and Aviva was permitted to rectify the mistake which it only discovered after receiving back the completed Form.
75. Furthermore, the Form included a proviso showing that the annuity and tax free cash figures quoted were estimates only and not guaranteed in any way. It also clearly stated that the amounts paid for his retirement benefits could be more or less than those shown on the Form.
76. However, I note that Mr S also says that Aviva actually paid him a Pension of £30,405.08 per annum and not £30,491.04 per annum as shown in its letter of 8 October 2019. Aviva has neither confirmed nor denied whether this is correct so I see no reason to doubt what Mr S has said. I consequently consider that Aviva should also explain the difference between the Pension that Mr S accepted in July 2019 and the Pension that was then paid, which it has so far failed to do.
77. Aviva also failed to provide details of how the Additional Policy Value, the Additional Pension and the Additional Tax Free Cash were calculated after rectifying the mistake of applying an inappropriate surrender penalty to the Policy Value.

78. I consider that it is reasonable for Mr S to challenge how the adjustments have been made. I find that Aviva shall provide Mr S with details of how these figures were calculated so he can be satisfied that the adjustments were accurate.
79. I note that Aviva has not awarded interest for the backdated payments that arose as a result of the Additional Pension. I find that it should do so. Aviva is, however, entitled to exercise commercial judgment when setting the rate which it uses to calculate interest for late payment of benefits. So it is reasonable that its interest calculation for the Additional Pension should be based on the same rate which Aviva used to calculate interest for late payment of the Additional Tax Free Cash.
80. Mr S has made a number of comments which are essentially about commercial decisions reached by Aviva including the removal of the surrender penalty. This is not something I would interfere with. How Aviva satisfies any legal and legislative requirements when running its business and managing its with profits fund is at its discretion. If Mr S believes that Aviva's business management is inadequate, he can raise his concerns with the Financial Conduct Authority or the Pensions Regulator separately.
81. There is no doubt that Mr S has suffered considerable distress and inconvenience because of the maladministration identified and attributable to Aviva. I note that Aviva has already paid several goodwill awards during the course of dealing with Mr S' complaint in recognition of this.
82. My awards for non-financial injustice are modest and not intended to be punitive. However the manner in which Aviva has handled Mr S' case is bound to have caused him severe distress and inconvenience. I am consequently increasing the award in respect of Aviva's maladministration to £3,000, inclusive of the multiple goodwill payments totalling £1,600 which Aviva has already paid Mr S.
83. I partly uphold Mr S' complaint.

Directions

84. Within 28 days of the date of this Determination, Aviva shall provide Mr S with:
- an explanation for the difference between the Pension he accepted in July 2019 and the Pension that was subsequently paid in October 2019;
 - details of how the Additional Policy Value, the Additional Pension and the Additional Tax Free Cash were calculated; and
 - details of how the interest available on the late payment of the Additional Tax Free Cash that was already paid has been calculated.

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85. Aviva shall also:

- pay interest on the back payment of the Additional Pension due from 2019 until 2021, in line with the interest paid on Additional Tax Free Cash; and
- award Mr S £3,000 (inclusive of the total goodwill payments of £1,600 already made) for the severe distress and inconvenience which he has experienced dealing with this matter.

Anthony Arter

Pensions Ombudsman
15 November 2022