

## Ombudsman's Determination

Applicant	Mr N
Scheme	Sun Life Flexible Pension Plan ( <b>the Plan</b> )
Respondents	Aviva

## Outcome

1. Mr N's complaint is partially upheld and to put matters right Aviva shall, within 21 days, pay Mr N £500 in respect of the significant distress and inconvenience he has suffered.

## Complaint summary

2. Mr N has complained that Aviva has not allowed him to continue the life assurance benefit in the Plan beyond his selected retirement date despite being informed that this would be possible.

## Background information, including submissions from the parties

3. Mr N originally took out a Flexible Pension Plan with Sun Life in 1987 and the policy included both pension and life assurance benefits. Mr N selected a retirement age of 60. Sun Life was later to become part of Aviva, after previously being taken over by Friends Life, who then took over the administration of the Plan.
4. Mr N says that in 2011, he was looking at deferring his retirement age to 65 and Friends Life provided an illustration if this were to happen, including extending the life cover. There was no indication that life cover could not be extended.
5. On 14 January 2019, Mr N telephoned Aviva to enquire about extending the Plan to age 65. Aviva confirmed that if he continued to pay premiums then the life cover would continue to age 65. Mr N asked for this to be confirmed by email.
6. On 29 January 2019, Mr N phoned Aviva to chase the confirmation email he had previously requested. During the call Aviva confirmed again that the life assurance benefit would continue to age 65.
7. On 31 January 2019, Aviva sent Mr N a letter in response to his request and said:

"I can confirm the following:

- The amount of Life Cover under the policy is £144,665.69
- The cost of the Life Cover is taken monthly by the reduction of units. The last monthly cost was £32.88.

I can also confirm Life Cover on the above plan will cease at the selected retirement date and only the policy fund value will be available to provide death benefit."

8. Mr N wrote to Aviva on 11 February 2019, enclosing a signed deferral form and direct debit instruction. Mr N said, "As discussed, may I confirm that the additional monthly payments into the above policy will add to the present fund and the life cover under the above plan will continue until I am 65." As Mr N did not receive a reply to his letter, he made several calls to Aviva's contact centre to chase for confirmation that life cover was in place.
9. On 8 April 2019, Aviva emailed Mr N and said that the life cover under the Plan could not be extended beyond the original terms of the contract (that is not beyond age 60) even if regular contributions continue. Mr N did not accept Aviva's decision and made a formal complaint. Aviva did not uphold Mr N's complaint but offered Mr N £100 for the wrong information provided and the distress and inconvenience caused.
10. Mr N says that it was his understanding that as long as he did not default in paying any of the premiums the life cover and benefits under the Plan had no specific end date. He has never defaulted on any monthly payment and now that he has reached the original end date of the policy, Aviva have not treated him fairly. The offer of £100 does not compensate him for the distress and inconvenience caused and is insufficient compensation for the cost of life assurance over the next five years.
11. Aviva say that when clients take out life cover, they are underwritten usually to the selected retirement date. The life cover and term of life cover would be shown on the policy schedule.
12. Prior to 6 April 2007, when the selected retirement date was reached, a client had the option of applying to extend life cover if premiums continued to their new selected retirement date. If they chose to do this a proposal would be sent to the underwriting department but there was no guarantee of acceptance or continuance at the same rates.
13. The legislation changed on 6 April 2007, meaning that any new life cover attaching to a pension plan would not attract tax relief. As life cover is mortality costed and deducted each month it was impossible for Aviva to administer this, therefore a decision was made not to accept any new life cover. In practice this meant that post 6 April 2007, any clients who had life cover could not extend this past the original selected retirement date.
14. As Mr N's original selected retirement date was at age 60, Aviva cannot allow life cover to continue beyond this date.

## **Adjudicator's Opinion**

15. Mr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below.
16. The Adjudicator reviewed the documents that Mr N and Aviva provided and said that the initial marketing documents in 1987 made it clear that policyholders had the option to continue life cover beyond the selected retirement date. However, Mr N and the Plan itself is subject to the terms and conditions of the policy. Aviva has provided a copy of the policy document and within this there is a section entitled "Policy Provisions applicable to the Life Plan". Under Section 2(c) of the Life Plan provisions it states:

"Notwithstanding anything herein contained to the contrary, the Society shall be under no obligation to accept any further Life Plan premium under the Life Plan if:

- (i) Regular Pension Plan Premiums cease, or
- (ii) The Life Plan ceases to be approved by the Board of Inland Revenue, or
- (iii) The Society ceases to be satisfied that the Annuitant continues to be a Qualifying Individual ...

If, in accordance with the foregoing provision, the Society declines to accept from any date any further Life Plan Premiums that would otherwise have been payable to the Society under the Life Plan, the provisions set out in section 1.2(g) of the policy provisions applicable to the Pension Plan annexed hereto shall apply."

Section 1.2(g) allows for the return of overpaid premiums.

17. Taking the above provision into account the Adjudicator concluded that Aviva had the power to decline any extension to the life cover if any one of the conditions applied. Aviva had explained that from 6 April 2007, any additional premiums to the Life Plan would not attract tax relief and, in effect, would not be approved by the Inland Revenue. Based on this Aviva, took a commercial decision not to allow any extension of life cover beyond the originally selected retirement date. The Adjudicator was of the view that it was reasonable for Aviva to take such a commercial decision and it was within the terms and conditions of the policy. Therefore, Mr N's complaint regarding the continuation of life cover should not be upheld.
18. Mr N has also complained about the level of compensation that he has been offered in respect of the incorrect information that Aviva provided. The Adjudicator noted that the offer of £100 is below the minimum award we would normally make in these circumstances. He therefore considered that Aviva should, within 21 days of the finalisation of this complaint, pay Mr N £500 for the significant distress and inconvenience he has experienced.

19. Aviva accepted the Adjudicator's Opinion, but Mr N did not, and the complaint was passed to me to consider. Mr N has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mr N for completeness.
20. Mr N says that he cannot accept and does not believe it is right that after being informed by Friends Life in writing, before being taken over by Aviva, and then being told by three separate individual policy advisers at Aviva that the life cover could continue, that Aviva can then retract what was agreed on his retirement date. For Aviva to say that it will not pay out on the life cover benefit if he should die before age 65 is just not right.

### **Ombudsman's decision**

21. I can understand Mr N's dismay at Aviva's refusal to allow a continuation of the life assurance benefit beyond his previously selected retirement age of 60, even though he was told on several occasions that this could continue. However, the provision of wrong information does not in itself give a right to that benefit. As the Adjudicator has explained both Mr N and the Plan are subject to the terms and conditions of the policy.
22. The terms of the policy are quite clear, that the Society, or Aviva as it is now, had the right from outset to decline a request for an extension of the life cover beyond the selected retirement age of 60. Mr N made a request in January 2019, to extend the life cover to age 65 and initially he was told that this was possible. But that information was incorrect and due to a change in legislation in April 2007, Aviva had made the commercial decision not to extend life cover beyond the original selected retirement date.
23. I will not normally interfere in a company's commercial decisions unless it can be shown that the company has acted outside of its legal obligations or the terms of the policy conditions. In this instance I find that Aviva has acted within the terms of the policy and there is no legal obligation in this case to comply with the wrong information it gave to Mr N.
24. I do agree, however, with the Adjudicator, that Aviva's award in respect of Mr N's significant distress and inconvenience, is insufficient and shall be increased to £500.

**Directions**

25. Within 21 days of the date of this Determination, Aviva shall pay Mr N £500 for the significant distress and inconvenience he has experienced.

**Anthony Arter**

Pensions Ombudsman  
24 February 2020