

Ombudsman's Determination

Applicant	Dr N
Scheme	Sun Life Financial of Canada FSAVC Plan (the Plan)
Respondent	Sun Life Financial of Canada (SLFC)

Outcome

1. I do not uphold Dr N's complaint and no further action is required by SLFC.

Complaint summary

2. Dr N has complained that SLFC did not apply a loyalty bonus to her pension benefits when the Plan matured. While she has recognised that she did not fully meet the criteria for the payment of the bonus, she has argued that SLFC did not adequately communicate to her the implications of her ceasing to make contributions to the Plan.

Background information, including submissions from the parties

3. On 19 December 1994, Dr N took out a free-standing additional voluntary contribution (**FSAVC**) plan with SLFC.
4. Section 14 of the Plan document sets out the terms under which a loyalty bonus is payable together with the method of calculation of the bonus. One of the conditions that must be met for the payment of the loyalty bonus, as set out in point 14(c), is:

“This Condition shall not apply unless a Member's Premium of not less than £200 per annum (or such other amount as the Company may determine for the purposes of this Condition) has been paid in each of the Policy Years which terminates during the 5 year period ending on the date on which retirement commences.”

5. In this same document, Policy Year is defined as:

“The period from the Commencement Date or any Policy Anniversary to the day immediately preceding the next following Policy Anniversary both days inclusive.”

6. During the first 23 years of the Plan, Dr N contributed on a consistent basis, thus meeting the requirement quoted in paragraph 4.
7. On 13 December 2017, SLFC wrote to Dr N to provide transfer information. Under a section headed 'Do I have a Guaranteed Annuity Rate?' it was stated that:

“Your policy may qualify for a loyalty bonus, as long as certain conditions are met. ... Check your terms and conditions or call us to find out if your policy includes a retirement bonus and how this can be lost.”
8. This section of the correspondence also included the following comment on the Lifetime Allowance:

“If the total value of all your pension funds is more than £1,000,000, and you have not taken steps to protect your funds, we have to apply a 'Lifetime Allowance' charge set by the Government. We strongly recommend that you take financial advice if your total pension savings exceed or are close to this amount.”
9. On 28 December 2017, Dr N's husband, on behalf of Dr N, advised SLFC in a telephone conversation that Dr N would be ceasing contributions to the Plan. She had a number of other policies with SLFC and was a member of the NHS Pension Scheme. She was concerned about breaching the Lifetime Allowance.
10. On 2 January 2018, SLFC wrote to Dr N to confirm that the direct debit had been cancelled and that the Plan would be paid up if premiums were not resumed within 90 days.
11. On 23 January 2018, SLFC sent letters to Dr N and her financial adviser. These letters included the same wording relating to the loyalty bonus as in paragraph 7.
12. On 9 February 2018, SLFC sent Dr N a reminder about missed premiums and this reminder included the comment:

“Please note that if your policy lapses due to non payment of premiums then it will only be possible to reinstate your policy if this is an option within your policy Terms and Conditions.”
13. On 19 February 2018, SLFC wrote to Dr N's financial adviser setting out the conditions under which a loyalty bonus would be payable. One of these conditions was stated as:

“The annual premium paid must have been at least £200 for the last 5 complete policy years prior to the retirement date or liquidation, whichever is sooner.”
14. There was also a comment that the Plan would, “qualify for a Loyalty bonus once the client reaches 60.”

15. On 23 February 2018, SLFC wrote again to Dr N's financial adviser and this letter included the same quote as in paragraph 13 above. In addition, the letter stated:

"I confirm this policy does not qualify for a loyalty bonus at this time as the client has not reached the age of 60."
16. On 12 March 2018, SLFC sent Dr N another reminder concerning missing premiums. This letter included the same message to that set out in paragraph 12 above and also stated:

"... please send the full amount to us immediately and that way you will retain the valuable benefits of your policy. Although your policy is active at the moment, this won't be the case indefinitely."
17. On 1 May 2018, a year before Dr N's planned retirement at age 60, SLFC sent her a letter discussing her upcoming retirement. This letter included the comment:

"Check your terms and conditions or call us to find out if your policy includes a retirement bonus and how this can be lost."
18. On 12 December 2018, Dr N's adviser contacted SLFC to request information on the loyalty bonus.
19. On 18 December 2018, SLFC responded to Dr N's financial adviser. It listed the criteria that needed to be met for a loyalty bonus to be paid and commented:

"I confirm this policy qualify (sic) for a loyalty bonus at this time."
20. On 27 December 2018, SLFC wrote to Dr N to further discuss her upcoming retirement. This letter included the comment:

"Check your terms and conditions or call us to find out if your policy includes a retirement bonus and how this can be lost."
21. On 9 January 2019, SLFC wrote to Dr N in response to a telephone call from her asking about her loyalty bonus. In its letter SLFC stated:

"I confirm this policy does not qualify for a loyalty bonus as the above criteria weren't met. Even if we receive further payments for this policy, it will not qualify for the bonus due to the premiums not totalling £200 each year for the last 5 complete policy years prior to the retirement date."
22. On 12 April 2019, Dr N appealed to SLFC, asking it to apply its discretion and pay her the loyalty bonus or allow her to pay the missing contributions retrospectively so that the loyalty bonus terms could be met.
23. On 24 April 2019, SLFC responded to Dr N informing her that it was unable to consider payment of the loyalty bonus or accept a contribution to be paid retrospectively. It listed the correspondence that it had previously had with Dr N and

her adviser, pointing out the instances where reference had been made to the loyalty bonus.

24. Unhappy with this response, Dr N raised a complaint. Dr N argued that she has been deprived of a loyalty bonus of at least £6,295.44.
25. Dr N has highlighted that she contributed to the Plan for over 23 years. She has argued that SLFC should either pay her the loyalty bonus as a discretionary payment or allow her to retrospectively make up the missing contributions, so that she is entitled to the loyalty bonus under the terms of the Plan.
26. Dr N said that she is frustrated that SLFC never explicitly stated the fact that she would lose her loyalty bonus and that some of the messages concerning loyalty bonus in its communications appeared under a misleading heading.
27. SLFC stated that it had correctly applied the terms of the policy document to this case and that correspondence to Dr N and her financial adviser set out, on a number of occasions, the terms under which a loyalty bonus would be payable.
28. On 21 April 2020, SLFC provided its formal response to Dr N's complaint. It advised that its stance remained unchanged from that detailed in its letter dated 24 April 2019.

Adjudicator's Opinion

29. Dr N's complaint was considered by one of our Adjudicators who concluded that no further action was required by SLFC. The Adjudicator's findings are summarised below:-
 - Dr N did not pay any contributions during the Policy Year 19 December 2017 to 18 December 2018. As a result of this, she was not entitled to a loyalty bonus under the terms of the Plan.
 - The Adjudicator considered the communications between SLFC, Dr N and her adviser in the period before the loyalty bonus was lost. The Adjudicator noted that none of the exchanges explicitly stated that the bonus would be lost due to her actions but, on two occasions, SLFC had outlined to her adviser the terms under which the loyalty bonus would be lost. SLFC had also encouraged Dr N to refer to the terms and conditions of the Plan with regard to the loyalty bonus.
 - The Adjudicator noted that some of SLFC's messaging concerning the loyalty bonus appeared under a heading of 'Guaranteed Annuity Rates'. However, the Adjudicator was of the view that the contents of the communications from SLFC and the Plan documentation were adequate for Dr N to understand the implications of ceasing contributions on her eligibility for the loyalty bonus.
 - While it is true that Dr N contributed consistently over 23 years, the policy documentation was clear in defining the criteria that needed to be met for a loyalty bonus to be paid.

- Dr N did not meet the criteria because she had not paid premiums totalling £200 each year for the last five complete policy years before her retirement date. Any application of discretion is solely for SLFC to decide upon. It has indicated that it will not apply discretion in this instance on the basis that sufficient information had been provided in relation to the loyalty bonus. The Adjudicator was of the view that the decision was not unreasonable.
 - In its letter, dated 18 December 2018, SLFC confirmed that the loyalty bonus was still applicable. This fact was correct at that date, but this was near the end of the Policy Year, so by the time Dr N received the letter, it no longer applied.
30. Dr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
31. Dr N provided her further comments which do not change the outcome. She said:-
- In several of SLFC's letters, it said to check the terms and conditions or telephone it to find out if a policy included a retirement bonus. As her adviser had telephoned SLFC she should not have had to also review the terms and conditions.
 - SLFC put the onus of interpretation of its terms and conditions on her. She believes that this approach is not appropriate given the circumstances of her complaint.
 - Her adviser contacted SLFC on three occasions and, on no occasion, did it receive an explicit answer which highlighted the imminent risk of the loyalty bonus being lost.
 - SLFC's refusal to exercise its discretion was unreasonable. SLFC failed to give her the information needed to make decisions relating to her loyalty bonus.
 - It was unreasonable for SLFC to have allowed her entitlement to a loyalty bonus to expire without notifying her in advance that this was about to happen.
32. I agree with the Adjudicator's Opinion and note the additional points raised by Dr N.

Ombudsman's decision

33. I note Dr N's assertion that she was relieved of the responsibility of checking her policy's terms and conditions because her adviser had telephoned SLFC. SLFC was merely suggesting ways in which further information could be obtained. Choosing one approach did not rule out the option for Dr N or her adviser to check the terms and conditions of her policy.
34. Dr N has argued that it was unreasonable for SLFC to put the onus of interpreting its terms and conditions on her. However, there were two letters sent to Dr N's adviser which provided the most clarity in relation to her loyalty bonus. These were dated 19 and 23 February 2018. They were sent after SLFC had confirmed to Dr N that, in

accordance with her request, the direct debit that had been funding her Plan had been cancelled.

35. Having reviewed these letters, I find that they clearly stated the terms for the payment of a bonus and there was little need for interpretation. I am satisfied that the criteria was correctly set out and that Dr N could have reasonably understood the consequences of ceasing her contributions.
36. I note that other communications from SLFC were less clear. It is difficult to fully comment on these as we do not have transcripts of the telephone conversations that came before them. However, these communications were focused on the current position and did not look ahead to what would happen if no further contributions were paid.
37. I do not agree that SLFC was obliged to notify Dr N that her loyalty bonus was about to expire. I find that sufficient information was available for Dr N to be aware of this fact and take the appropriate remedial action to secure her bonus.
38. I am satisfied that SLFC has correctly applied the terms and conditions of the Plan. To award a loyalty bonus outside of these terms is at SLFC's discretion. I agree with the Adjudicator's opinion that SLFC's decision not to exercise its discretion was not unreasonable.
39. I do not uphold Dr N's complaint.

Anthony Arter

Pensions Ombudsman
4 February 2021