

Ombudsman's Determination

Applicant	Dr A
Scheme	Whyte Chemicals Ltd Retirement and Death Benefits Scheme (the Scheme)
Respondent	Aviva Life & Pensions UK Limited (Aviva)

Outcome

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

Complaint summary

2. Dr A complained that he was not told his pension funds would be moved from the with-profits fund to a deposit account at his normal retirement date (**NRD**) when he telephoned Aviva to defer the date at which he intended to take his pension.

Background information, including submissions from the parties and timeline of events

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 8 July 2018, Aviva sent Dr A a retirement benefits statement which had an incorrect date of birth for him.
5. Dr A telephoned Aviva to correct this. During the conversation with Aviva, Dr A was told he did not have to take his pension at age 60, his NRD, and that he could defer payment until a later date.
6. On 3 December 2018, Aviva sent Dr A a retirement notification letter, with a retirement date in February 2019, at age 60.
7. On 10 December 2018, Dr A telephoned Aviva to change the age at which he intended to receive his pension to 65, which he would reach in February 2024. Dr A was told by Aviva that this could be done.

8. On 25 July 2019, Aviva sent Dr A a retirement benefits statement. This said that on his NRD in February 2019, his funds had been moved out of the with-profits fund into a deposit account.
9. On 1 August 2019, Dr A wrote to Aviva to complain that the funds had been moved. He said if the funds were moved in February 2019, why did it take Aviva until 25 July 2019, to tell him. He said Aviva should return his monies to the with-profits fund, backdated to February 2019.
10. On 6 August 2019, Aviva wrote to Dr A. Aviva said it noted Dr A had told it in December 2018, that he wished to defer the date at which he wanted to receive his pension to a date in February 2024. However, it said contractually his NRD was in February 2019. Aviva told Dr A that his benefits were held in the with-profits fund until his NRD. It said his NRD could not be amended as this was specified when his policy was set up, however, the date at which he wanted to receive his pension was amended to be in February 2024, as he requested.
11. On 12 August 2019, Aviva wrote to Dr A again, having spoken to him in response to the earlier letter. Aviva said Dr A had telephoned it on 10 December 2018, to advise that he was not planning to retire until he reached age 65, in February 2024. Aviva said it told Dr A that he could defer his retirement to a later date. Aviva apologised that it did not tell Dr A that his funds would be moved into a deposit account upon his NRD in February 2019. Aviva offered Dr A £50 for not advising him of this when he telephoned.
12. Aviva's position:-
 - Dr A was told that the date he could receive his pension could be deferred past his NRD.
 - The funds being switched from the with-profits fund to a deposit account was the correct course of action following the passing of Dr A's NRD. Dr A would have had a copy of the terms and conditions and would have been aware of this.
 - Dr A appeared to be confused between deferring the date at which he wanted to receive his pension, which could be done and deferring his NRD, which could not.
 - The NRD was set at the onset of the policy and governed what would happen when this date was reached. A customer could defer their retirement age to 75, but this did not mean their NRD changed. It did not have to explain this to Dr A when he requested to defer the date at which he wanted to receive his pension.
 - Had Dr A not telephoned Aviva to defer the date he wanted to receive his pension, the switch to the deposit account would still have happened in February 2019, in accordance with the terms and conditions. Dr A would still have been notified of this in the July 2019 statement.

Adjudicator's Opinion

13. Dr A'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:-
- In the Adjudicator's opinion, the information Aviva gave Dr A about not having to receive his pension at age 60 and that the payment date could be delayed beyond his NRD was correct.
 - Also, in the Adjudicator's opinion, the correct advice was given by Aviva in December 2018, concerning delaying taking his pension until February 2024 when he reached age 65.
 - When Dr A reached age 60, the date of his NRA, the funds were transferred from the with-profits fund to a deposit account, which in the opinion of the Adjudicator was in accordance with the Scheme Rules (**the Rules**) (see Appendix).
 - The Adjudicator's opinion was that there was no obligation on Aviva to notify Dr A prior to 25 July 2019, that the funds would be moved from the with-profits fund to a deposit account.
 - A copy of the Rules would have been available to Dr A upon request, which would have explained what would happen to the funds after his NRD. Had Dr A not delayed payment beyond his 60th birthday, the switch would still have occurred.
 - In the Adjudicator's opinion, the offer from Aviva of £50 for not making it clear to Dr A that his funds would be moved from the with-profits fund to a deposit account when he telephoned Aviva on 10 December 2018, was reasonable.
 - As there was no evidence of maladministration by Aviva, in the Adjudicator's opinion, an award for Dr A's time, costs and stress was not justified.
14. Dr A did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Dr A provided some further comments in response to the Opinion. In summary, he said:-
- Aviva agreed to defer the date at which he received his pension past his NRD.
 - Aviva confirmed that not making it clear to him that his funds would be moved from the with-profits fund to a deposit account when he telephoned it on 10 December 2018, was an error on its part.
 - Aviva's offer of £50 as compensation confirmed it accepted its error.
 - Aviva is liable for many years of pension maturity and lost enhanced payments.
15. I have considered the additional points raised by Dr A. However, they do not change the outcome, I agree with the Adjudicator's Opinion.

Ombudsman's decision

16. Dr A complained that when he asked Aviva to defer the date at which he intended to take his pension he was not told that his pension funds would be moved from the with-profits fund to a deposit account at his normal retirement date (**NRD**).
17. The information Dr A received from Aviva both in July and December 2018 was accurate and correctly reflected the Rules that govern the Scheme.
18. The funds were moved from the with-profits fund to a deposit account when Dr A reached age 60, which was the NRD set at the onset of the policy. I do not find that there was any maladministration by Aviva in doing this as it was in accordance with the Rules.
19. Dr A contends that Aviva were at fault for not making it clear to him that his funds would be moved from the with-profits fund to a deposit account when he telephoned it on 10 December 2018. I do not find that there was an obligation on Aviva to have notified Dr A prior to 25 July 2019, that the funds would be moved from the with-profits fund to a deposit account. If Dr A had not delayed payment of his pension beyond his 60th birthday, the switch would still have occurred and was in accordance with the Rules, a copy of which would have been available to Dr A upon request.
20. Further, I do not find Aviva's comment, that it could have made it clear to Dr A that his funds would be moved from the with-profits fund to a deposit account, was an acceptance that there was an error. It was simply an acknowledgement that it could have reminded Dr A of what would happen on his NRA. That Aviva did not do so does not amount to maladministration.
21. I do not uphold Dr A's complaint.

Anthony Arter

Pensions Ombudsman
22 November 2022

Appendix

Extract from the Rules of the Whyte Chemicals Ltd Retirement and Death Benefits Scheme

"Retirement

7.(1) On the retirement of a Member or of a Deferred Pensioner

- (a) at Normal Retirement Date the Cash Accumulation Retirement Assurance (Including bonus) on his life subject to a minimum of the guaranteed sum
- (b) before Normal Retirement Date the surrender value of the Cash Accumulation Retirement Assurance (including bonus) on his life determined as described in Clause 6 of this Schedule
- (c) after Normal Retirement Date the sum applying at Normal Retirement Date increased by such amount as the Office determines having regard to the period elapsed since Normal Retirement Date

will be available to provide the benefits in respect of him under the Scheme on retirement and on death after retirement.

(2) On the retirement of a Member or Deferred Pensioner the Office at the request of the Grantee acting in accordance with the provisions of the Scheme will deal with the sum available to provide his benefits in accordance with one or more of the following:

- (a) pay a lump sum for payment to the Pensioner Member or Deferred Pensioner
- (b) apply a lump sum at a rate guaranteed in accordance with the Schedule of Rates (or if more favourable at the then current annuity rate and on the then current terms of the Office) to the purchase of an annuity on his life commencing on the date of retirement corresponding to a pension payable to him under the Scheme".