

## Ombudsman's Determination

Applicant	Mr N
Scheme	Aviva Personal Pension Policy ending 431 ( <b>Plan One</b> ) Aviva Personal Pension Policy ending 741 ( <b>Plan Two</b> )
Respondents	Aviva Life and Pensions UK limited ( <b>Aviva</b> )

## Outcome

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

## Complaint summary

2. Mr N complained that the value of the lump sums he received from Plan One and Plan Two (**the Plans**) in April 2020, were lower than those quoted in previous valuations he received.
3. Mr N said he was given insufficient time to decide what to do with his Plans just before he reached age 75. If he had not taken the lump sums his only option would have been to purchase an annuity.

## Background information, including submissions from the parties

4. 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.
5. On 1 April 1982, Mr N began making monthly contributions of £85 to Plan One.
6. On 1 July 1984, Mr N also started to contribute £85 each month to Plan Two.
7. On 15 November 2019, Aviva wrote to Mr N setting out his options under the Plans when he reached age 75 in May 2020.
8. In December 2019, Mr N responded to Aviva and asked for quotes for the values of the Plans if he took both as lump sums.
9. On 9 January 2020, Aviva provided two lump sum payment quotes (the **January 2020 valuation**):
  - The value for Plan One was £120,318.71(net).

- The value for Plan Two was £90,613.71 (net).
  - Both quotes contained the wording “Please remember the figures shown are not guaranteed and could change before you retire. Fund values can go down as well as up”.
10. On 6 March 2020, Aviva wrote to Mr N to say that it had tried to contact him to ask what he wanted to do regarding the money in the Plans, but it had not heard from him.
  11. The letter set out that if Aviva did not hear from Mr N before his 75<sup>th</sup> birthday he would lose valuable retirement options. After age 75 Mr N would only be able to take an annuity, backdated to his 75<sup>th</sup> birthday.
  12. The letter also stated that if Mr N did not respond he would lose the right to “shop around” for an annuity, lose the right to transfer his fund to another pension company and also lose the right to take his pension as a one-off lump sum.
  13. Mr N spoke to Aviva on the telephone to discuss the options that were available, and Aviva explained that the values that Mr N would receive had recently fallen due to the impact of Covid 19 on market conditions.
  14. On 13 March 2020, Mr N completed the forms to indicate that he wanted to take both Plans as lump sums. He also asked whether Aviva could use “discretion” in the final calculations as he was aware of the current unfavourable market conditions.
  15. On 18 March 2020, Aviva received Mr N’s completed retirement payment forms.
  16. Payment was not made immediately as there was a delay in the verification of Mr N’s identity. As such, the funds were not paid out until 28 April 2020. The actual values paid out were:
    - The value for Plan One was £104,480.07 (net).
    - The value for Plan Two was £78,767.24 (net).
  17. On 30 May 2020, Mr N complained to Aviva that the final amounts paid to him were not “fair and reasonable”. He also stated that his pension pot should have been invested in a way that reduced risk at the end of the 38-year investment.
  18. On 15 June 2020, Aviva responded to Mr N and explained that it was only acting as administrator of the Plans and any decision on how the funds were invested was Mr N’s responsibility. Mr N had been able to switch funds at any time he wished.
  19. Aviva stated that legislation had changed on 6 April 2011 which meant that it was no longer a legal requirement for benefits to be taken before age 75. But as this change was not mandatory Aviva had decided not to alter the end date for Mr N’s Plans to beyond age 75.

20. Aviva also explained that the calculation of the amounts to be paid were carried out on the working day following receipt of all its payment “requirements”. In Mr N’s case there had been a delay in verifying his identity which meant that Aviva’s requirements were not satisfied until late April 2020. As there had been a delay Aviva would carry out a loss assessment to check that Mr N had not been disadvantaged.
21. On 30 July 2020, the outcome of the loss assessment was sent to Mr N which concluded that there had been no financial detriment. Fund prices were higher when the policies were cancelled on 22 April 2020 compared to 19 March 2020 which was the day after Mr N’s completed forms had originally been received.

## **Adjudicator’s Opinion**

22. 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:-
  - The Plans’ ended on Mr N’s 75<sup>th</sup> birthday and there was no facility for Mr N to remain invested beyond age 75. As a result of this Mr N needed to formally set out his intentions before the Plans ended.
  - Aviva contacted Mr N six months before the Plans ended. Mr N was aware that he could take the Plans’ values as lump sums and he asked for quotations to help him decide what to do. The Adjudicator’s opinion was that Aviva gave Mr N sufficient time to consider what his possible retirement options were.
  - The January 2020 valuation requested by Mr N clearly stated that the figures given were not guaranteed.
  - If Mr N had wanted to, he could have transferred to a pension provider that allowed investment past the age of 75. This was one of the options set out by Aviva.
  - Aviva was not required to apply discretion to the calculation due to the prevailing market conditions. Aviva had to calculate the amount payable based on the Plans’ rules.
  - Aviva was acting as administrator for the Plans and was not required to switch Mr N’s investments to lower risk alternatives in anticipation of the Plan end dates, it could only act on Mr N’s instructions when it came to investments. The Adjudicator noted that Mr N could have selected to change the underlying investments in his Plans had he wished, but this was not something that Aviva could do independently.
23. Mr N did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr N provided some additional comments which are summarised below:-

- It was unfair and discriminatory not to treat investors equally pro rata to their size of holding and he had been prejudiced after investing in the Plans for 38 years.
- He had been discriminated against on the grounds of age. As only those aged within a few months of 75 could suffer the loss of large sums of money in an unexpected stock market crash, without having the option of retaining their investment until markets recovered.
- It was not realistic to expect that anyone would change their entire investment to an alternative one, to avoid the unlikely chance of a market crash.
- Aviva should not be allowed to hide behind technicalities and at the very least it should be obliged to warn members about the specifics of this potentially disastrous end to a 40-year investment.

24. I have considered these points, but they do not change the outcome. I agree with the Adjudicator's Opinion, I will respond to the points made by Mr N for completeness.

### **Ombudsman's decision**

25. Mr N complained that the value of the lump sums he received from the Plans in April 2020 was lower than those quoted in previous valuations he received. Mr N also said that he had to decide what to do with the Plans before he reached age 75 or his only option was to buy an annuity and as such there was no time for him to allow the value of the Plans to recover.
26. As Mr N had personal pension arrangements any money paid into the Plans was invested in a fund or funds. The growth of those funds would impact the final value payable. If the funds performed well the final Plan value would be higher, if the funds underperformed the final Plan value would be lower. The unprecedented impact of the Covid 19 pandemic had a severe and lasting impact on financial markets.
27. The information accompanying the January 2020 valuation stated that the figures quoted were not guaranteed. Aviva also explained to Mr N when he requested his lump sums that the valuations had fallen due to the effect of the Covid 19 pandemic on the investment markets. So, while I understand Mr N's frustration at the fall in value, I am satisfied any reduction in value was not as a result of any action, or inaction, by Aviva. I do not uphold this part of Mr N's complaint.
28. It is important to note the Plans had a set end date after which no further investments could be made, this was Mr N's 75<sup>th</sup> birthday. This end date had been in place since Mr N began investing in the Plans. Aviva contacted Mr N six months before the Plans' end date to notify him that he needed to make a decision regarding what to do with his funds, so Mr N was made aware in good time that he needed to set out which retirement option he required. If Mr N had wished to remain invested with Aviva, or to transfer elsewhere, in order to allow the values to recover he could have done so.

29. Mr N could also have taken his benefits from the Plans at an earlier date, but he wished to leave the funds invested until the Plans matured at age 75. The Plans were invested and as such the values were subject to market conditions and could go up or down depending on the prevailing market volatility. Aviva set out the options available to Mr N well in advance of the Plans' end date. I find that Aviva gave Mr N sufficient time to consider what his possible retirement options were.
30. Mr N argued that it was not realistic to expect someone to change their entire investment to avoid the unlikely event of a stock market crash. However, Mr N could still have transferred his Plan to a different provider that allowed him to leave his funds invested after age 75 if he so wished. Although legislation had changed Aviva was not obliged to allow investments past the established end date of the Plans. A change of provider would however have given Mr N the option of taking the funds at a later date if he did not want his investments to be crystallised at age 75. As Mr N remained in the Plans, he accepted that they did have a set end date.
31. Mr N submitted that Aviva should have applied discretion to the calculations of the amount payable to him and used a different date for the valuations as he had invested for 38 years and was now suffering due to the market uncertainty created by the global pandemic. The calculation of the amounts to be paid took place on the working day after Aviva had received all the paperwork required to make payment from the Plans and although this was unduly delayed, I note that Aviva has conducted a loss assessment to ensure Mr N is no worse off in this regard. I find that Aviva has acted correctly in following the Plans' rules regarding how the value of a lump sum payment was calculated.
32. Mr N said that Aviva should have switched to lower risk investments before the Plans ended. I agree with the Adjudicator that Aviva were not able to make such decisions and any such investment decision needed to be proposed by Mr N. Aviva acted to administer the Plans on Mr N's behalf and in doing so it was obliged to act on his instructions regarding investment strategy.
33. Mr N contended that having an investment that has a set end date of age 75 is discriminatory as this leaves those just prior to their 75<sup>th</sup> birthday exposed to the prevailing market conditions at the time the investment ends. I do understand Mr N's frustration with what has occurred with his investment but the same end point is in place for all holders of this type of pension plan, and it is a requirement that was agreed when the Plans were taken out. Aviva has applied the relevant rules in how it has treated Mr N and I do not find the set end date to be in any way discriminatory.
34. Finally, there is no provision within the Plans to treat members differently based on the size of their investment or the length of time they have been invested in the Plan. In the absence of such a provision any action by Aviva that favoured one investor over another would be inappropriate.

35. I do not uphold Mr N's complaint.

**Anthony Arter**

Pensions Ombudsman  
15 November 2022