

Ombudsman's Determination

Applicant	Mrs R
Scheme	Aviva Personal Pension Plan - (the Plan)
Respondents	Aviva

Outcome

1. I do not uphold Mrs R's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs R has complained that Aviva (formally Norwich Union) did not inform her when it changed the terms of her original contract. In particular, she says she was not made aware that the age she could access her pension benefits was increasing from age 50 to age 55.

Background information, including submissions from the parties

4. On 6 November 1993, Mrs R took out the Plan with Aviva. At this time, the Plan had a retirement date of 10 October 2014 for Mrs R, which was when she reached age 50.
5. On December 2009, Aviva sent Mrs R a letter stating that a decision had been made by the Government, effective from 6 April 2010, which would affect her retirement age under the Plan. Aviva confirmed that from 6 April 2010 Mrs R would not be able to retire until age 55 and it provided her with a new retirement date of 10 October 2019. Mrs R has said she did not receive this letter.
6. On 17 November 2015, Mrs R complained to Aviva stating that the terms of her original contract with Norwich Union in relation to her retirement age should stand.
7. On 12 January 2016, Aviva wrote to Mrs R stating that the government increased the normal minimum pension age (**NMPA**) as part of its pension reforms. This change in legislation increased the age from which Mrs R can access her pension from age 50 to age 55. In reference to her original contract, it said that her retirement date of 10 October 2014 was agreed under the old legislation when the NMPA was 50.

However, following the legislative change in 2010, Aviva moved its policyholders' NMPA to age 55.

Adjudicator's Opinion

8. Mrs R complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised briefly below:-
- Mrs R said that, as her original contract with Norwich Union stated her retirement date as 10 October 2014, Aviva should honour this date. However, the retirement date was agreed under the old legislation when the NMPA was age 50. As the terms of her Plan do not supersede changes in legislation the Adjudicator was satisfied that the Plan had to be amended accordingly.
 - Rule 1.1 of the Plan rules makes it clear that members are not entitled to receive any benefits that would amount to an unauthorised payment. If Mrs R were to receive her pension from age 50, rather than 55, it would represent an unauthorised payment. Members can only receive the pension benefits that they are entitled to under the rules of the Scheme and permitted by Statute.
 - Section 15.1 of the Plan rules confirms that the Plan administrator may at any time, in writing, make any alteration to the terms of the Plan. Aviva had provided evidence that it sent a letter to Mrs R in December 2009 confirming the alteration. The Adjudicator appreciated that Mrs R has said she has no knowledge of receiving a letter in December 2009 from Aviva. However, as the letter was addressed to her current home address at the time, she was satisfied that there had not been maladministration.
 - Mrs R contends that Aviva should have asked her to accept the change to her contract. However, under section 15.1 of the Plan rules, no acceptance is required in order for the Plan administrator to make an alteration to the rules.
 - Aviva has provided evidence that shows that annual statements from November 2012 were sent to Mrs R. The Adjudicator was of the view that when Mrs R received her annual statements it should have been clear to her that her pension age was now 55 as was shown on the statements.
9. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs R for completeness.

Ombudsman's decision

10. Mrs R believes the Plan she took out in 1983 is a binding contract, and the original terms and conditions should therefore continue to apply. However, overriding legislation overrides the terms and conditions agreed between Aviva and Mrs R in relation to the Plan. As such, Aviva were obliged to amend the Plan and Mrs R can no longer rely on the original provisions.
11. Mrs R also maintains that she never received a letter in December 2009 from Aviva, informing her of the changes to the Plan. However, the evidence provided by Aviva demonstrates that it acted correctly by sending the letter to Mrs R's correct home address on file. As such, I do not find that it acted in maladministration.
12. It may well be that the letter never reached Mrs R for a number of reasons unrelated to Aviva, such as a postal error. If this was the case, then I sympathise with her as she may not have been aware of the changes to the Plan until much later than intended. However, I also note that she was receiving statements each year from 2012 onwards with clear information of changes to her retirement age. As such, she should have been aware of the change in the minimum retirement age several years before her initial retirement age. There has been no maladministration by Aviva.
13. Therefore, I do not uphold Mrs R's complaint.

Anthony Arter

Pensions Ombudsman
19 September 2017