

Ombudsman's Determination

Applicant	Mr E
Scheme	Aviva Section 32 Buy out Bond (the Plan)
Respondent	Aviva UK Life (Aviva)

Outcome

1. I do not uphold Mr E'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. Mr E has complained that Aviva incorrectly informed him in June 2011 that it was not possible to pay him a pension from the Plan at its maturity date on 8 June 2011 because there were insufficient funds in the Plan to cover the Guaranteed Minimum Pension (**GMP**) liability. He says that as a consequence of mistake:
 - he was forced to continue working for a further three years after he could have retired; and
 - he had to put on hold several retirement plans either because he was still working or did not have the funds to do so

He also says that:

- he required emergency hospital treatment in December 2013 and he could have used his pension money to speed up the treatment with private healthcare;
- he was signed off sick from work for nearly a year and the pension money could have been use to help make his quality of life during this period much less stressful; and
- although Aviva have now paid him the pension instalments due to him from the Plan's maturity date with appropriate interest for late payment, the goodwill compensation payment of £2,000 which they offered him for the considerable distress and inconvenience that he has suffered is derisory

Background information, including submissions from the parties

4. In March 1987 Mr E transferred his pension benefits from the London Transport Pension Fund to the Plan.
5. Mr E says that just prior to the Plan's maturity date of 8 June 2011, i.e. his 62nd birthday, Aviva sent him a letter to inform him that:
 - (i) the current fund value of the Plan of £51,015 was insufficient to cover the cost of providing the GMP liability;
 - (ii) it was possible for a member to retire before State Pension Age (**SPA**) of 65 providing there were sufficient funds to cover the GMP liability; and
 - (iii) their calculations show that it was currently not possible for them to pay the full GMP of £5,135 pa available at SPA
6. In their letter dated 16 August 2016, Aviva informed Mr E that:
 - (i) at the Plan's maturity date, they had believed that the Plan could not support the GMP and had therefore asked him to wait until SPA before taking his retirement benefits;
 - (ii) they had subsequently undertaken a review of the Plan and identified that a benefit could have been paid at the Plan's maturity date even though the plan value was not sufficient to cover the GMP;
 - (iii) this would be achieved by an annuity increasing each year until SPA at which point the full GMP amount would be payable;
 - (iv) they had paid £11,107 into his bank account comprising of £13,115.40 in missed pension payments and £745.53 in interest accrued from the date on which each monthly annuity payment should have been made calculated using Bank of England base rates plus 1% less an amount for tax deducted of £2,753.93
7. Mr E was dissatisfied with the amount of compensation paid by Aviva. In order to try settling his complaint amicably, Aviva offered him a further £2,000 as a gesture of goodwill in recognition of the distress and inconvenience which he has suffered as a consequence of their mistake.
8. Mr E rejected the additional compensation offer which he considered to be derisory for the reasons given above.
9. Mr E says that:
 - Aviva should have realised that they could have paid benefits to him at the Plan's maturity date of 8 June 2011 much earlier than they actually did;

- it is not acceptable for Aviva to only have realised their mistake some five years later;
- the Plan is a financial contract between him and Aviva; and
- he does not consider that Aviva have upheld their obligations and in fact have breached the agreement by making “a huge error”

Adjudicator’s Opinion

10. Mr E’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 briefly below:

- Mr E is not disputing that Aviva have correctly calculated the amount of pension payable to him from the Plan’s maturity date of 8 June 2011. His complaint is that Aviva have awarded him insufficient redress to compensate him for the considerable distress, inconvenience and loss of opportunity which he has suffered receiving his retirement benefits three years late as a consequence of their mistake.
- Aviva’s error was clearly constitutes maladministration on their part.
- The Pensions Ombudsman’s role is to put Mr E, as near as possible, in the position he would have been in had the mistake not taken place. The maladministration identified has not caused Mr E any injustice in the form of any actual financial loss because Aviva have already put things back as they should have been by taking the appropriate corrective action.
- It is evident however that Mr E has suffered considerable distress and inconvenience as a result of the maladministration and, in recognition of this, Aviva have offered him a compensation payment of £2,000 which is adequate in the circumstances and in line with what the Pensions Ombudsman would be likely to direct in a formal determination.
- A payment for distress and inconvenience to Mr E is not intended to be compensation in the legal sense of the term, rather it is an ex gratia payment intended as tangible recognition that mistakes and delays have been intrusive/eaten into Mr E’s time/caused upset.
- The Pensions Ombudsman’s awards for distress and inconvenience are typically modest (generally in the region of £500 to £1,000) and are not intended to punish the respondent.

11. Mr E did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. I

agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

12. Mr E's complaint is similar to a case that the previous Pensions Ombudsman Mr Tony King determined, i.e. Mr A Harris (PO-2269), in December 2014.
13. Mr Harris had complained that Aviva improperly did not allow him to receive the benefits available to him from the "Section 32 buy out policy" (**the Policy**) from his 60th birthday. The former Pensions Ombudsman determined that Mr Harris' complaint against Aviva should be upheld because he considered that the Policy, whilst it did not properly deal with the circumstances that had arisen, should be construed in such a way as to allow the payment of a pension from age 60.
14. It was therefore only as a consequence of my predecessor's determination of the Harris complaint in December 2014 that Aviva first became aware that they had made a mistake by not allowing other policy holders such as Mr E whose plan value was insufficient to cover the GMP at the Plan's maturity to receive their benefits from that date.
15. Aviva wrote to Mr E in August 2016 to inform him that they carried out reviews of all the products which they offer as part of their commitment to customers and as consequence of one such review, they had identified that Mr E could have taken his benefits earlier than he did.
16. In my view, Aviva should also have explained to Mr E in their letter the circumstances which led to their decision to review such policies. If Aviva had done so, Mr E's attention would have been drawn much earlier to the fact that it was only recently that Aviva were conscious that a mistake had been made for which they could take appropriate action to remedy.
17. Whilst I accept that this has been a difficult time for Mr E, payments for distress and inconvenience are typically modest and I am satisfied that the payment offered by Aviva of £2,000 is in the broad range I would expect to see in circumstances comparable to his
18. Therefore, I do not uphold Mr E's complaint.

Karen Johnston

Deputy Pensions Ombudsman
29 March 2017