

## Ombudsman's Determination

Applicant	Ms N
Scheme	Aviva Personal Pension Plans ( <b>the Plans</b> )
Respondent	Aviva

## Outcome

1. I do not uphold Ms N'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. Ms N has complained that Aviva have said she is unable to take her benefits as a lump sum, because she has already started receiving annuities from the Plans.

## Background information, including submissions from the parties

4. Ms N holds two small Plans with Aviva.
5. On 5 February 2009, Ms N started taking her benefits as an annuity through one of the plans.
6. On 31 May 2011, Ms N started taking her benefits as an annuity through the other plan.
7. On 21 April 2017, Ms N contacted Aviva and said she would like to stop receiving the annuities from the Plans, and that she would like to receive a one-off cash lump sum. She said this would be more beneficial as she lived abroad, and it was costly to cash cheques for such small amounts. Ms N also mentioned that both Plans held a clause to allow commutation.
8. Aviva wrote to Ms N and said she could not take her benefits as a commuted lump sum as she had already made an agreement to receive annuities through both of the Plans. It said that although the policy wording allowed customers to cash in annuities, it was not bound to facilitate this.
9. Ms N remained dissatisfied and brought her complaint to the Pensions Ombudsman to be independently reviewed.

## **Adjudicator's Opinion**

10. Ms 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:-
  - Aviva has not done anything wrong in not allowing Ms N to take one off lump sum payments. It is under no legal obligation to facilitate her request to commute her benefits.
  - Ms N has not suffered an actual loss. She will continue to receive the annuities in accordance with her initial request.
11. Ms N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Ms N provided her further comments which do not change the outcome. Ms N said the following:-
  - it is unreasonable that Aviva will not allow her to commute her annuities to lump sums;
  - her policies allow the option of commutation and legislation allows for this, so she does not understand why Aviva will not allow it;
  - other companies allow for commutation, so it seems unfair that Aviva will not;
  - she reached age 60 in 2015 and her benefits do not exceed £10,000 so she is entitled to commutation;
  - she believes Aviva has a legal duty to allow commutation; and
  - it costs 12 euros each time she banks a cash cheque of £5 so she is suffering a financial loss.
12. Aviva agreed with the Adjudicator's Opinion and did not make any further comments.
13. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Ms N for completeness.

## **Ombudsman's decision**

14. Ms N is dissatisfied that Aviva will not allow her the option of commuting her annuities into lump sum payments because the annuities have been in payment since 2009 and 2011.
15. Ms N believes it is unreasonable for Aviva not to allow her the option to receive lump sums. She has said that her policies allowed the option for commutation and legislation allows for this. Mrs N also submits that other companies allow commutation of annuities in payment and says that it seems unfair that Aviva will not do this.

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16. Aviva has said that it has never allowed the option of commutation for annuities that are already in payment. It said the policy documents may set out options whereby lump sums might have been payable before the annuity has come into payment. But, once the choice has been made for an annuity to be paid, the decision cannot be changed. I do not believe this is unreasonable. Ms N made the decision to set up annuities for the Plans and in doing so she made a contractual agreement with Aviva to receive annuities. Now that different options have become available she would like to change to her decisions. But that does not mean that Aviva are required to permit her to do this. Aviva has made a business decision that once annuities are in payment it cannot be reversed, which is for Aviva alone to decide.
17. Ms N believes that given the change in legislation Aviva have a legal duty to offer commutation into lump sums. When the new regulations came into force they were not retrospective, and providers were permitted to provide certain options and decide whether or not they wished to allow commutation of annuities already in payment.
18. Finally, Ms N has said she suffers a loss of 12 euros, every time she banks a cheque of £5. Although, I can appreciate this is a frustrating situation for Ms N. This is not due to any maladministration on the part of Aviva.
19. I do not uphold Ms N's complaint.

**Anthony Arter**

Pensions Ombudsman  
30 January 2019