

Ombudsman's Determination

Applicant	Mr N
Scheme	MRT Castings Ltd Discretionary Pension Scheme (the Scheme)
Respondent	Aviva

Outcome

1. I do not uphold Mr 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. Mr N is complaining that Aviva sent him incorrect information over a number of years, showing that his normal retirement age was 60, when in fact it was 65.

Background information, including submissions from the parties

4. The Scheme was set up with an effective date of 10 March 1979, and the policy schedule issued to Mr N (dated 6 February 1980) has a retirement date of 7 April 2022 (Mr N's 65th birthday). The Scheme is a small self administered scheme (**SSAS**) and therefore Mr N is a member and a trustee.
5. On 30 June 2014, Mr N's independent financial advisor (**IFA**) wrote to Aviva asking for details of the policy. Aviva responded on 11 July 2014 and confirmed that there was a guaranteed annuity at normal retirement age on 7 April 2017 (Mr N's 60th birthday).
6. In the lead up to his 60th birthday, Aviva wrote to Mr N and issued a standard approaching retirement letter on 20 October 2016. This was followed up with a retirement quotation, at Mr N's request (and sent to his IFA), on 31 January 2017. Both documents referred to a retirement date at age 60.
7. Aviva state that it became aware, when responding to queries from the IFA, in February 2017, that there was an error in the retirement date. However, correspondence on 15 February, 9 and 23 March 2017 refer to a retirement date at age 60 on 7 April 2017.

8. The IFA called Aviva on 11 April 2017 to raise a complaint. There are two telephone notes on this date. The first states that the IFA is making a complaint, the second states that the quotation issued did not include the five percent escalation factor. Aviva state that it was in April 2017 that the IFA was made aware of the issue regarding the incorrect retirement date.
9. Mr N states that, due to his decision to take his benefits from the Scheme after his 60th birthday, his wife agreed with her employer to reduce her working hours. This was agreed with her employer on 22 May 2017.
10. Aviva formally responded to the IFA's complaint on 19 June 2017 (this letter also refers to a telephone conversation between the IFA and Aviva on 16 June 2017). This letter explained how the error had occurred, namely that, due to a number of mergers, the policy had moved to a new administration system and the retirement date was changed from 65 to 60 in error. It acknowledged that as part of this error, contributions had also incorrectly ceased. It provided the IFA with correct retirement quotations and confirmed that Mr N could restart contributions, if he wished. Aviva also offered to put any losses right, following further information from the IFA.
11. Aviva wrote directly to the Scheme administrator (of which Mr N is a director) on 30 June 2017, also explaining the reason for the error. It confirmed that contributions could restart and be applied as if the error had not occurred. The letter also confirmed that the IFA had been provided with revised quotes and that the guaranteed annuity rate would apply from Mr N's 65th birthday (if the policy remained in force until then).
12. On 7 July 2017, Mr N and his wife completed the purchase on a second home for £245,000.
13. Mr N complained direct to Aviva on 26 July 2017. He explained the basis for taking retirement in 2017 and that he and his wife had made plans to reduce their working hours. He also said that they sold shares in a business in order to purchase the property and were planning on using the income from the Scheme to cover the monthly costs of running their second home. Mr N also said that he had an existing mortgage on his main home and that he would not be able to afford this, due to the reduction in income and other expenditure. He made a claim of financial loss of £100,526.26.
14. Aviva considered Mr N's complaint and his financial loss claim and wrote to Mr N's IFA on 7 August 2017. It did not uphold Mr N's claim for £100,526.26, but offered £750 as an apology for the service he had received. It also offered to consider any direct financial loss Mr N had suffered in relation to the changing of his retirement plans. Aviva's reason for its decision was:-
 - The amount Mr N was claiming was based on the higher, incorrect quotation (gross), but Aviva would only look at the difference between the net amount of annuity and the net actual amount of annuity. In this case, Mr N was able to

take benefits from the Scheme, but had chosen not to and therefore this calculation had not come into consideration;

- In relation to the property purchase, it rejected the argument as Mr N had been made aware of the error prior to completing the purchase; and
- It also rejected the argument that Mr N was suffering severe financial disadvantage, as it had been informed that Mr N wished to continue making contributions of £3,198.44 per annum into the Scheme. It did not feel that this supported a claim that its error had caused financial hardship.

15. Following this, Mr N decided to complain to the Financial Ombudsman Service (**FOS**). As part of the FOS investigation, Mr N told the adjudicator that his IFA had only discovered the error three days before the purchase of the property. While FOS were investigating, issues occurred in relation to restarting the contributions, but this does not form part of the complaint to this service. As the investigation progressed, FOS were informed that the Scheme is a SSAS and therefore not within its remit. As a result, the complaint was passed to this service to investigate.

16. As part of The Pensions Ombudsman's investigations, Mr N was asked to provide further information regarding his financial loss (in addition to the information provided to Aviva on 26 July 2017). In response he said:

- He did not feel that it was reasonable to ask him to sell his second home or that his wife increase her working hours to mitigate his loss;
- He has had to change his plans by not reducing his working hours any further;
- He did not provide details of his earnings;
- He has an outstanding mortgage of £210,000;
- He had purchased the second home via the sale of shares and wanted the annuity to pay the running costs of the property (of which he provided a breakdown and offered to provide copies of bills associated to the figures); and
- He had a copy of the policy documents since his brother retired in 2010, but had filed these away and only looked at them when the complaint began.

Adjudicator's Opinion

17. 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 briefly below:-

- It was agreed between the parties that Mr N had been provided with incorrect information. Legally, Mr N is only entitled to his correct benefits from the Scheme, but the Ombudsman could consider any defences that Mr N relied on

the misinformation to his detriment. Mr N would need to show that he made financial decisions, which he would not otherwise have done, based on the misleading information. He would also need to show the extent to which he had mitigated any of his losses and the Ombudsman would need to be satisfied that Mr N would not have taken the same action, regardless of the information received.

- Mr N's main arguments (the purchase of the second home and the reduction to his wife's working hours) were considered. However, there was insufficient information provided about Mr N's income, which made it difficult to establish if Mr N had other sources of income to support the changes to his income and expenditure.
- The Adjudicator noted that the IFA had been made aware of the error by the middle of June 2017 and that, as Mr N's agent, it was reasonable for Aviva (and this service) to assume that the correct information was provided to Mr N. If not by the IFA, then it was also reasonable that Mr N would have been aware via the letter sent to the Scheme administrator. Both letters were sent before the purchase of the second home and therefore, Mr N proceeded with the purchase regardless of the issue surrounding his benefits from the Scheme.
- The fact that Mr N had chosen not to take his benefits from the Scheme also suggested that he was not in urgent need of the additional income. In order for Mr N's claim of detrimental reliance to be successful, he needed to show that he had taken steps to mitigate his losses, but there was no evidence provided to show that he had done so.
- Mr N admitted that he had a copy of the policy schedule since 2010, but had filed this away. Mr N is a trustee and was therefore responsible for having knowledge of the contents of the document and the correct normal retirement age. As a trustee and a member, Mr N ought to have raised the incorrect retirement age with Aviva much sooner. This also goes against Mr N's argument of detrimental reliance.
- The Adjudicator did agree that Aviva had caused Mr N significant distress and inconvenience in the provision of incorrect information over a number of years. This was also compounded by Aviva's recent submission that it was aware of the error in February 2017, but continued to send incorrect information. It was the Adjudicator's view that the previously offered £750 was reasonable and it was up to Aviva to decide if it still wished to make the offer and for Mr N to accept it.

18. Mr N did not accept the Adjudicator's Opinion and provided the following submission (in summary):
- He is disappointed in the outcome and that the Adjudicator did not find that Aviva had caused him financial and emotional stress, and that she agreed with the "token payment" of £750;
 - The Adjudicator highlighted the need to mitigate his losses, even though her view was that Aviva were not responsible for his losses. He questions whether if he had done so, would Aviva have then contributed towards his losses (for example, the additional stamp duty and any difference in the selling price if he had sold the property);
 - He says that he received no direct communication from Aviva before the purchasing of the second home. His IFA was also unaware that he was in the process of purchasing a second home. He says that he was not aware of any problems regarding the annuity before the property was purchased;
 - While the Adjudicator's findings may be legally correct, he argues that Aviva's actions are morally wrong. He questions the point of this service if the Ombudsman is not able to fine Aviva or compensate him appropriately.
19. Aviva did not comment further on the Opinion, but confirmed that its offer of £750 is still open to Mr N to accept.
20. Mr N's further comments do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

21. My role is to determine whether there has been maladministration and, if so, to put the matter right in so far as I have power to do that. I must act within the constraints of the law, and I cannot simply uphold a complaint because it is believed to be morally right. It is also not my role to punish respondents. Where I am satisfied that a complainant has suffered direct financial loss in circumstances where a court would recognise their right to recover it I can direct that loss be made good. I can also make an award to recognise a complainant's non-financial loss (such as distress and inconvenience) but I have no power to impose fines.
22. I must start from the fundamental principle that a member is only entitled to their correct benefits from the pension scheme. The exception to that position is where a complainant can demonstrate, on the balance of probabilities, that they relied to their detriment on an incorrect statement made to them, that it was reasonable to rely on it, and that they suffered loss as a consequence. The evidential burden is on the complainant and in this case I do not consider that Mr N can discharge it for the reasons below.

23. As a trustee, Mr N would have been aware of the policy terms and should have known that the information he was receiving about his NRA was incorrect. That makes it difficult for him to establish that he in fact relied on the incorrect information or that reliance on it was reasonable.
24. I bear in mind that corrected information was sent to the IFA and the Scheme administrator prior to the purchase of the property. Mr N has said that no direct communication was sent to him, therefore he did not know the true state of affairs before the purchase went ahead. However, Aviva were not to know that the IFA would not share the correct information with Mr N once it was received. Mr N has also not denied receiving the letter sent to the Scheme administrator (of which he is the company director). While this may not have been personally addressed to him, it would have been clear on receipt that the letter pertained to Mr N's benefits and it was up to Mr N to take action on it. The address on the letter is correct and, as the majority of UK mail gets delivered to the intended destination, on the balance of probabilities, it is more likely than not that this letter was received.
25. In any event, I am not persuaded that Mr N can show that his decision to purchase the property was in fact made in reliance on the representation that an annuity would be available aged 60. In other words there is no evidence that he would not have purchased it if he had considered the true facts. Plainly it was possible to achieve the purchase without the annuity and I have seen no evidence that the running costs are unaffordable without it.
26. I do not consider that purchase of a house is itself detrimental. Property has investment value and I have seen no evidence of financial loss flowing from the decision to purchase.
27. I note the point that Mrs N reduced her hours, but I do not consider that Mrs N was entitled to rely on a quotation provided to Mr N. That claim is too remote.
28. I agree that questions about duty to mitigate only arise if I first find that financial loss has been caused. In this case I do not consider that financial loss has been proved, so I make no findings about duty to mitigate.
29. I agree that Aviva provided misinformation over a number of years and that it could have alerted Mr N to this earlier than it did. However, Aviva have allowed Mr N to reinstate his contributions and will honour his rights at age 65. So far as rights under the scheme are concerned. I am satisfied that Aviva have already agreed to put Mr N back into the position he would have been had the error not occurred which is the remedy which I would otherwise give.
30. Turning to distress and inconvenience, the awards which I can make are modest and not intended to punish. I consider that the offer of £750 by Aviva to recognise the distress and inconvenience caused to Mr N is reasonable and it is now up to Mr N to contact Aviva directly should he wish to accept the offer.

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31. Therefore, I do not uphold Mr N's complaint.

Karen Johnston

Deputy Pensions Ombudsman
31 July 2018