

Ombudsman's Determination

Applicant	Mr E
Scheme	UK Provident Self-employed Pension Plan (the Plan)
Respondents	Aviva (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's complaint is that an annuity quotation he received recently is substantially lower than previous illustrations. Mr E also asserts that bonuses have incorrectly not been applied to his pension since 2003.

Background information, including submissions from the parties

4. On 3 November 1983, Mr E was sent an estimate of his pension by UK Provident (the previous plan provider) that illustrated the value of his basic guaranteed pension and projected cash fund at age 60 and age 70. The estimate stated that it assumed the ordinary bonus rate would be 5.70% a year and that the terminal bonus would be 35% of the ordinary bonus. The cash fund was calculated on this basis and this projected an annual pension of £31,657.50 at age 70.
5. On 15 February 2018, Aviva emailed Mr E to explain that his Plan was written to age 70, although he had elected to receive it from age 60. Aviva further said that bonuses were calculated to age 70 and then reduced to the relevant retirement age.
6. On 11 June 2018, Aviva responded to further questions from E about why his Plan was written to age 70 and why no annual bonuses had been applied since 2003. Aviva explained that the pension was written under Retirement Annuity Contract (**RAC**) legislation and all pension policies were written to age 70 or age 75, "regardless of when the customer intended to retire".
7. Aviva continued that bonus rates were announced annually and could be 0%. The bonus rate had been set at 0% since 2004 because of significant losses and

balanced out earlier bonuses that over-inflated Mr E's guaranteed benefits compared to the policy's "fair share of returns made".

8. On 31 July 2018, Mr E raised a formal complaint with Aviva disputing its explanation of all the points he raised in earlier correspondence. Mr E said he considered that "the original illustration was a complete fiction" and that his pension cannot have been managed correctly by Aviva.
9. On 17 August 2018, Aviva provided its response to Mr E's complaint. Aviva reiterated its view that RAC pensions were designed to be taken at age 70, but Mr E could take it from age 60. Albeit with a Guaranteed Annuity Rate, rather than the guaranteed pension option, as the latter is only available from age 70.
10. Aviva further argued that the previous illustration, Mr E referred to in his correspondence, was calculated in 1983. It argued that confidence in investment growth was higher in the 1980's when the policy was sold. Aviva also argued that the guaranteed bonuses already added to Mr E's pension had outstripped the growth of its investment and that the stock market is now more volatile. Therefore, further regular bonuses would not be added to Mr E's policy, but a final bonus might be added when Mr E retired.

Adjudicator's Opinion

11. 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 below:-
 - The original policy schedule from UK Provident stipulates that the Plan was written under RAC legislation. The 'Benefit at Annuity Entry Date' is 6 October 2028 and this is the date that Mr E reaches age 70. In the Adjudicator's view, this was also the only date that Mr E could reasonably expect the basic annuity to become due. However, the policy schedule explained that Guaranteed Annuity Rates were also available from age 60.
 - The Adjudicator did not agree with Mr E's view that the illustration he was supplied with must be "a complete fiction". As the illustration Mr E provided in support of his complaint was produced in 1983, the Adjudicator was of the opinion it could not reasonably be expected to paint an accurate picture of Mr E's current pension entitlement.
 - Furthermore, the illustration from 1983 clearly states that the growth figures shown are projected and not guaranteed. The Adjudicator was of the view that Mr E could not reasonably expect to rely on the projected growth rates as they are only projected, not guaranteed. In the Adjudicator's opinion, it would reasonably evident that the financial markets would not behave in such a uniform manner.

- In the Adjudicator's opinion, Mr E had ample opportunity to request more reliable estimates in advance of his proposed retirement date and query the correct position with regard to his retirement options. The Adjudicator understood Mr E's disappointment on learning of the correct position, but in his view, it would have been reasonable for Mr E to have taken steps to become aware of it much sooner.
12. 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 and I will therefore only respond to the key points made by Mr E for completeness.

Ombudsman's decision

13. Mr E maintains that he always intended to retire at age 60. He argues that this is the reason that figures are projected to age 60 on the original 1983 estimate. Mr E does not believe that he would have agreed to the Plan being written to age 70 as the State Pension Age and retirement age at his employer was age 65 in 1984. RAC's, or Section 226 pensions as they are also known, were designed to help workers, not offered a workplace pension, an opportunity to accrue pension benefits. RAC's are individual contracts between the member and the provider. The State Pension Age and normal retirement age at Mr E's employer at the time would have had no bearing on how Mr E's Plan was written.
14. Furthermore, Aviva have provided a copy of the original policy schedule and it clearly states that the Plan's 'benefit at annuity entry date' is 6 October 2028 (Mr E's 70th birthday). Consequently, I find that Mr E could not reasonably have had any expectation that the Plan's guaranteed income was available at any other date.
15. Mr E accepts the Adjudicator's point that the figures provided on the 1983 estimate are not guaranteed. However, he does not consider it to be a reasonable expectation for a policy to run for over 35 years and realise less than 20% of the initial, projected value. Mr E has also provided an estimate from 2014 in support of his arguments. He maintains that he has done his utmost to clarify the correct position with his Plan.
16. A pension is a valuable asset for later life and should be considered as such. It is not for Aviva to judge whether the Plan's growth will meet Mr E's needs, it is a matter solely for him to consider. Mr E quite rightly points out that regulatory standards for information provided to pension members are very different now, compared to 30 years ago. However, this is not the fundamental issue in this complaint. Rather, it is that investment returns are never guaranteed and neither Aviva (nor the providers preceding it) have ever suggested otherwise. I fully appreciate Mr E's disappointment upon learning the true position of his Plan, however I find that he should reasonably have discovered it much earlier.
17. Mr E further argues that if a 'deliberate policy' of not applying bonuses had been adopted by Aviva, then he should have been told of it in order to consider his options.

Bonuses are calculated and communicated on a yearly basis (subject to investment returns) and can be nothing at all. Aviva has argued that no annual bonuses have been added since 2003, as previously added bonuses have inflated Mr E's guaranteed benefits beyond the 'fair share' of the Plan's investment returns.

18. Aviva has a fiduciary duty to all members to ensure the Plan is managed responsibly. This includes considering the growth of the Plan's liabilities (by awarding bonuses) compared to its likely investment returns in future. I do not find that to be a 'deliberate policy' of not applying bonuses. Furthermore, information about bonuses is communicated on a yearly basis to Mr E and so he could have considered his options during the previous years when the bonuses were being reported as nil.
19. Therefore, I do not uphold Mr E's complaint.

Anthony Arter

Pensions Ombudsman
19 December 2018