

Ombudsman's Determination

Applicant	Mr N
Scheme	Rolls-Royce Money Purchase Scheme (the Scheme)
Respondent	Aviva Life & Pensions UK Limited (Aviva)

Outcome

1. I do not uphold Mr N's complaint and no further action is required by Aviva.

Complaint summary

2. Mr N complained that Aviva refused to implement the Large Fund Discount (**LFD**) to his benefits once they were transferred to the Aviva Income Drawdown Account (**IDA**). This resulted in additional charges being applied to the IDA. An LFD is applied to larger funds and reduces the annual management charge.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. When Mr N was an active member of the Scheme, his benefits were administered within an Aviva Workplace Retirement Account. On 31 January 2017, he left employment and became a deferred member of the Scheme. He was transferred to a scheme for deferred members (**the Deferred Members' Scheme**). The LFD was applied to this scheme.
5. Following his transfer to the Deferred Members' Scheme, Mr N completed a pension drawdown application, after which his deferred benefits were transferred to the IDA. Aviva informed Mr N that this transfer would be on a 'like for like' basis. So, as the LFD had been applied to the Deferred Members' Scheme, Mr N expected it to also be applied to the IDA.
6. On 5 March 2018, Aviva sent Mr N a pension illustration. It stated that the value of his pension was £231,800.93.

7. On 13 March 2018, Aviva sent Mr N a revised pension illustration. It stated that the value of his pension was £191,722.72.
8. Subsequently, Mr N complained to Aviva about the reduction in the value of his benefits.
9. On 24 January 2019, Aviva informed Mr N that it had investigated his concerns and explained that the LFD should not have been applied to the Deferred Members' Scheme and therefore would not be applied to the IDA. This meant that the full annual management charge was applicable on the IDA.
10. Aviva gave Mr N a detailed explanation as to why the LFD should not have applied to the IDA. It provided him with a breakdown of the charges he should have paid, to demonstrate that he had been under-charged. It said that the reporting was accurate but that it should have provided a better explanation of the process. It informed Mr N that the pension illustration dated 13 March 2018 represented the value of his pension once he had transferred to the IDA; that his feedback had been passed onto the relevant team and that a full investigation would be conducted into the concerns raised by him.
11. On 11 February 2019, Aviva sent Mr N another pension illustration. It stated that the value of his pension was £147,817.21.
12. On 22 February 2019, Mr N sent Aviva a letter. He said he understood the claim that he only benefitted from the LFD because of an administrative error. He told Aviva that it should refund him the difference between the opening balances on the 5 March 2018 and 13 March 2018 pension illustrations, which he said was £18,000. He also said Aviva should make charges clearer. He asked why Aviva would not stick to the offer made in the illustration dated 5 March 2018.
13. On 29 April 2019, in its response to Mr N, Aviva stated that a business decision was made to remove the LFD on any plans it should not have been applied to. It said it had to ensure that all customers affected were put back into the position they should have been in the first instance. Aviva concluded that it could not fulfil Mr N's request to apply the LFD to the IDA.
14. Aviva denied Mr N's request for it to pay him £18,000 and explained that the difference between the opening balances on the two March 2018 illustrations was due to many factors, not just the charges. Aviva said that Mr N benefitted from its mistake, as it did not request the underpaid charges for the period to be paid back by him. Aviva informed Mr N that whilst it could not apply the LFD to the IDA, Mr N could transfer out of his benefits. Aviva said it would, however, pass on to the relevant team Mr N's feedback that charges should be presented more clearly.
15. On 25 March 2021, Aviva provided Mr N with a further explanation as to why the LFD would not be paid. It apologised for not having noticed the error regarding the LFD earlier, and informed Mr N that it was rectifying the issue for all Scheme members

and refraining from requesting the underpaid charges back from them. It said it would not be honouring the LFD moving forward for any Scheme members.

Mr N's position

16. Although Aviva stated that it was not possible to implement the LFD, it had done so for approximately one year, albeit in error. He would like the LFD to be applied to the IDA and for Aviva to pay him back for the excess charges taken. He said he would also consider an apology from Aviva.

Aviva's position

17. The 13 March 2018 illustration did not account for the tax-free payment of £57,950.23 Aviva had made to Mr N on 9 March 2018. The difference between the opening balances of the 5 March 2018 and 13 March 2018 pension illustrations was also because there was a gap in charges being applied between 23 February 2018 and 5 March 2018.
18. It did not ask Mr N to pay back the charges he had underpaid due to the LFD having been mistakenly applied to the Scheme.
19. It is unable to pay Mr N the LFD, as he is not entitled to it. But, it has paid Mr N £500 in recognition of the impact of its error.

Adjudicator's Opinion

20. 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 below, in paragraphs 21 to 24.
21. Following his transfer to the Deferred Members' Scheme, Mr N was no longer entitled to the application of the LFD so, it would not be appropriate for Aviva to continue the mistake of providing this discount to the charges or pay him to make up for its refusal to do so.
22. Aviva decided not to ask Mr N to pay back the charges he underpaid as a result of the LFD being incorrectly applied to the Deferred Members' Scheme. So, if the mistake had not occurred, Mr N would be in a financially worse position as he would not have benefitted from the discounts that he did. So, Mr N did not experience financial loss.
23. The negative consequence of the mistake for Mr N, was the loss of his expectation that the LFD would apply to the IDA. It is understandable that he may have felt disappointed upon being informed that Aviva would not apply the LFD to the IDA. However, this did not give rise to an entitlement to the LFD and, in the Adjudicator's view, Mr N did not suffer non-financial injustice as a result of the maladministration.
24. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N provided his further comments, which do not change the outcome. I

agree with the Adjudicator's Opinion and note the additional points raised by Mr N. In response to the Opinion, Mr N said:-

- His complaint does not centre on financial loss, or specifically a claim for £18,000, but the conduct of Aviva.
- He questioned how it can be correct that a party enters into an agreement, and then chooses not to implement its terms. He also asked how it can be correct that such a party justifies this by saying it made a mistake.
- Aviva has refused to provide verifiable evidence of it having made a mistake regarding the application of the LFD to his pension benefits.

Ombudsman's decision

25. Mr N complained that Aviva refused to apply the LFD to his benefits when they were transferred from the Deferred Members' Scheme to the IDA.
26. Aviva has said that the LFD was applied to the Deferred Members' Scheme in error and that a business decision was made to remove the LFD on any plans to which it did not apply. I note Aviva's decision not to recover the underpaid charges.
27. It is understandable that Mr N would have experienced disappointment that having been told his benefits would be transferred on a 'like for like' basis, this did not have the meaning he understood it to have, namely that the LFD would apply to the IDA. Aviva could have limited the extent of that disappointment by communicating more clearly the charges that would be applicable. However, Aviva's failure to do so does not mean that Mr N is entitled to have the LFD applied to the IDA.
28. Mr N contends that Aviva broke the terms of an agreement with him by refusing to apply the LFD to the IDA. There is no evidence that Aviva specifically told Mr N that the LFD would be applied to the IDA. I do not accept that by informing Mr N that his pension benefits would be transferred to the IDA on a 'like for like' basis, Aviva established an agreement to apply the LFD to the IDA.
29. Mr N said that Aviva has refused to provide verifiable evidence of it having made a mistake regarding the application of the LFD. I have not seen anything giving reason to doubt the integrity of the evidence submitted by Aviva in relation to the application of the LFD.
30. Mr N said that the subject of his complaint is not now financial loss but is about the conduct of Aviva. I accept that Aviva could have exercised more thorough record-keeping and not raised Mr N's expectation in relation to the charges that would be applied to the IDA. However, I find that Aviva's subsequent apology for making a mistake in applying the LFD to the Deferred Members' Scheme, the acceptance of Aviva's offer of £500, for the distress and inconvenience caused, and its decision not to recover the underpaid charges is sufficient redress for its administrative oversights.

CAS-50863-D5X8

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

Anthony Arter CBE

Deputy Pensions Ombudsman
28 March 2023