

## Ombudsman's Determination

Applicant	Mr L
Scheme	JEP & Sons Ltd Pensions Scheme ( <b>the Plan</b> )
Respondent	Aviva

### Outcome

1. I do not uphold Mr L'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 L's complaint is that Aviva reduced his loyalty bonus when he transferred his pension to a new pension provider.

### Background information, including submissions from the parties

4. Mr L took out the Plan in 1993. One of the benefits was a loyalty bonus, which would be paid in full, provided benefits were taken on or after his Normal Retirement Date (**NRD**) of 27 September 2018, and used to purchase an annuity.
5. Mr L asked Aviva for a retirement illustration in early 2016. Aviva issued an illustration which showed an estimated retirement fund of £120,800.96 and a loyalty bonus of £5,853.29. This was based on the assumption that Mr L purchased an annuity, either with Aviva or on the open market.
6. Prompted by the changes to legislation relating to pensions which took effect in April 2015, Mr L employed the services of a financial adviser (**FA**) to help him to consider his retirement options. The FA advised him to opt for flexi-access drawdown, and asked Aviva to provide a transfer quotation.
7. In April 2016, Aviva issued a transfer quotation which showed a fund value of £116,436 and a loyalty bonus of £2,732.23, giving a transfer value of £119,168.23. As such, the transfer quotation revealed that the loyalty bonus would be lower if Mr L opted to transfer his benefits out of the Plan before his NRD, unless he used the benefits to buy an annuity. Dissatisfied, Mr L's FA asked Aviva why this was the case.

8. On 1 August 2016, Aviva responded that, under the terms and conditions of the Plan, the loyalty bonus is lower if the funds are transferred before NRD, unless an annuity is being purchased, either from Aviva or on the open market. Aviva explained that increases in the loyalty bonus are staged; the lowest proportion of 20% being awarded to members transferring their benefits within five years of NRD. Aviva said the objective was to reward members who did not transfer their benefits before their NRD. The staged increase was also intended to lessen any sudden jumps in the value of the Plan.
9. Aviva further explained that, when the Plan terms and conditions were written, there was much less flexibility with regard to taking benefits, and a member had to stop working before they could start drawing their pension. Due to this, there was a significant difference between “vesting” and “transferring” pension benefits; vesting, which was reflected in the retirement quotation issued in early 2016, was considered to constitute a major lifestyle change. On the other hand, a transfer, as indicated in the transfer quotation, was interpreted as a voluntary lifestyle decision.
10. Mr L decided to go ahead with the transfer, which was completed on 21 September 2016.
11. However, Mr L remained dissatisfied, and he ultimately referred the complaint to us. He was represented by his FA, who argued that Aviva had been insufficiently flexible, bearing in mind the new pension flexibilities. He also referred to a review by the Financial Conduct Authority (**FCA**) into exit charges and submitted that this is indicative of public and official concern with the application of exit charges.

## **Adjudicator’s Opinion**

12. Mr L’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:-
  - The Plan terms and conditions say that a full loyalty bonus is only payable when a member takes benefits on or after their NRD. As such, Aviva calculated the transfer value in accordance with the terms and conditions of the Plan.
  - Mr L went ahead with the transfer in the full knowledge that he would not receive the full loyalty bonus.
  - The FCA’s review of exit charges related to a different matter and so can have no bearing on the outcome of the complaint.

13. Mr L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L's FA 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 L's FA for completeness. In summary, he submits that, if Mr L had taken out an annuity instead of transferring his benefits to another provider so he could go into flexi-access drawdown, he would have received the full loyalty bonus. As such, he considers Mr L has been penalised due to the fact that the Aviva Plan could not accommodate flexi-access drawdown.

### **Ombudsman's decision**

14. In the first instance, I should explain that the legislative changes introduced in April 2015 do not compel pension providers to rewrite the terms and conditions of any of their plans. In addition, I cannot instruct them to alter their terms and conditions.
15. Turning to Mr L's complaint, I note that Aviva made him aware that he would not receive the full loyalty bonus before the transfer went ahead. So he proceeded with the transfer in the full knowledge of the implication with regard to the loyalty bonus.
16. In its letter dated 1 August 2016 to Mr L's FA, Aviva explained that, under the terms and conditions of the Plan, there is a reduction in the loyalty bonus if a member transfers their pension to another provider before NRD. Aviva added that this was done in order to reward members who did not transfer their benefits prior to this date; the staged increase was to minimise any sudden jumps in the value of the Plan. So Aviva made Mr L's FA aware of the relevant terms and conditions, and gave reasons for their inclusion. This enabled Mr L to make an informed choice as to whether to go ahead with the transfer.
17. Mr L's FA has referred to the capping of exit charges by the FCA. However, this relates to a different matter, and so it cannot have any bearing on Mr L's complaint.
18. Overall, I do not find any evidence of maladministration by Aviva.
19. Therefore, I do not uphold Mr L's complaint.

**Anthony Arter**

Pensions Ombudsman  
18 July 2017

**Appendix**

**CU Sterling Executive Pension Plan – Pension Policy Standard Policy Conditions**

20. Section 16 (Loyalty Bonus) states:-

“Provided a Regular Contribution and/or Additional Regular Contribution is paid for a minimum period of years specified by the Company, a Loyalty Bonus may be added to the Member’s Fund on the Retirement Date of the Member (or on the Member’s death before his pension starts). The terms and conditions which apply in respect of payment of the Loyalty Bonus are determined at the absolute discretion of the Company and full details of the terms and conditions applicable from time to time are available on request.

The Company reserves the right to withdraw the provision for payment of Loyalty Bonuses under the Policy at any time but any such decision will not affect any previously agreed terms or conditions for payment of Loyalty Bonuses in respect of qualifying Regular Contributions and/or Additional Regular Contributions in payment at that time”.