PO-26363

Ombudsman's Determination

Applicant	Mr D
Scheme	A Barker & Sons Limited Executive Pension Plan **(the Plan)**
Respondent	Aviva

Outcome

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

Complaint summary

2. Mr D's complaint is about the transfer value of the Plan. Having produced reasonable returns up until 2015, the transfer values quoted each year began to fall. Mr D believes this is a deliberate effort on the part of Aviva to reduce the Plan's value so that a lower guaranteed pension would be payable to him in retirement. He wants compensation equal to the difference between the Plan's maturity value and the transfer value that was available in 2015.

Background information, including submissions from the parties

3. In 1992, Mr D was the Finance Director at A Barker & Sons Limited, who arranged the Plan for him with the Provident Mutual Life Assurance Association. This was subsequently transferred to Aviva following a merger of life companies. The Plan was invested entirely in Provident Mutual's With-Profits Fund (**the Fund**), which remained the case after the merger, although it was renamed "The Aviva Life & Pensions UK Limited Provident Mutual Sub Fund".

4. A replacement policy document was issued in 2005 which set out the main provisions of the Plan and stated that Mr D's normal retirement date (**NRD**) would be 11 May 2018 when he reached age 65. It also stated that future investment returns were not guaranteed. In 2007, Mr D left his employer with an entitlement to pension benefits as set out in the policy document.

5. The Plan value grew reasonably consistently until 2015, when the annual statement showed a fall in value. This downward trend continued until 2018, by which time the transfer value had fallen by approximately 15% from its highest point.

6. Mr D complained to Aviva, saying that despite quite favourable investment conditions generally, transfer values had fallen in the previous three years. He felt Aviva was treating him unfairly and had instituted a deliberate policy of reducing the transfer values as he approached retirement.

7. He contended that the Plan contained valuable guaranteed benefits in the form of a guaranteed annuity rate (**GAR**). He believed that Aviva was attempting to engineer the lowest possible maturity value once it became evident that he was unlikely to transfer the Plan before maturity and would therefore be setting up an annuity with Aviva rather than exercising the open market option (**OMO**).

8. After consulting with its technical experts, Aviva wrote to Mr D on 2 July 2018 stating that:-

   - The aim of the Fund was to return to investors 100% of their investment together with the profit accrued over the period between inception and maturity, less the expenses of running the Fund. Aviva said that expenses may fluctuate in any given year. Investors were arranged in groups to take advantage of cross-subsidy and pooling of risk for policies with similar characteristics to each other.

   - The Fund used a smoothing mechanism to retain some profits in good years, which would be used to augment bonuses in poor years. However, if losses were substantial, this could reduce some of the gains already achieved. Aviva said it had not artificially reduced the maturity value to limit the purchasing power of the GAR.

   - The Fund invested a substantial proportion of its assets in corporate bonds and gilts rather than equities and this had led to a particularly low return of only 0.04% in 2015.

   - Aviva also provided a link to its Principles and Practices of Financial Management which gave an overview of with-profits funds generally, and included the Rules in relation to heritage funds such as the one in which Mr D's benefits had accrued. This document was accompanied by a copy of the latest Information Sheet "Investment in the With-Profit Fund" (**the Information Sheet**), which set out the asset mix and listed the discrete annual returns for the preceding five years.

9. Mr D decided not to take his pension benefits while his complaint was being considered, but a few months after NRD he took his benefits, choosing a level annual pension of £8,442.22 a year, guaranteed for five years, together with a tax-free lump sum of £27,733.84.

10. As he had delayed arranging his annuity pending the outcome of his complaint, Mr D asked Aviva to backdate his pension to NRD.

11. Aviva refused this request in a letter of 21 September 2018, stating that:-

- Mr D was provided with correct information regarding his entitlement in his retirement quote which had set out the options open to him. It had confirmed in the retirement quote what would happen if his instructions were not received by NRD.

- All previous information supplied to Mr D about the performance of the Plan had been correct at the time it was sent.

- The 2 July 2018 letter had not included any information that would have affected the date at which Mr D could take his retirement benefits.

- Mr D made the decision to delay taking his benefits until after the complaint was resolved without first confirming that he would be able to retain the original retirement date. Aviva had also considered the length of time Mr D had taken to request a backdated annuity.

- Only in exceptional circumstances, such as serious illness, could an annuity be backdated by a short period, if a customer had been physically unable to submit their retirement option forms.

Adjudicator's Opinion

12. Mr D'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 must run the with-profits fund in accordance with the Principles and Practices of Financial Management. Under the Regulator's Conduct of Business Sourcebook rules, Aviva must also demonstrate annually that it is doing so.

    - Although with-profits funds are generally more stable than other market-based funds, they can be slow to respond to market conditions. The evidence indicated that there was poor performance in both 2012 and 2015 and the growth enjoyed since then had been insufficient to compensate for these poorly performing years.

    - Mr D's returns at NRD reflected the overall performance of the Plan, which was not guaranteed to produce a specific return at retirement.

    - In respect of backdating his annuity income to his NRD, the Adjudicator concluded that it was not unfair of Aviva to refuse Mr D's request for backdating his pension income.

13. Mr D did not agree with the Adjudicator's findings stating that:-

    - The average annual performance in the five years prior to his NRD was just over 6% which did not justify Aviva in reducing the Plan's value. These returns would have been more than sufficient to compensate Aviva for the losses in 2013 and 2015.

- Aviva had failed to provide any regular information other than the annual statement, so he had insufficient information upon which to base any decisions that he might otherwise have reached about the Plan.

- Aviva must have been aware of the GAR, the presence of which placed him in a very poor position to mitigate any significant reduction in the Plan's value prior to NRD.

14. Mr D did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr D provided his further comments as set out above, which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr D for completeness.

Ombudsman's decision

15. The adjudicator considered Mr D's responses, but they did not change her view. She said the fact that bonus was added annually meant there was likely nothing additional to learn between annual statements in respect of fund performance. Mr D had obtained what his fund was worth at retirement and the only guarantee was the annuity rate upon which his pension income would be based

16. Mr D's Plan was invested in a with-profits fund. This is a pooled fund which is run for the benefit of its members, not for Aviva's benefit. The pooled nature of the fund means that policyholders were held in groups of investors who all benefitted from similar returns during their period of investment.

17. Mr D was not entitled to anything more than he actually received from the Plan at NRD. The final bonus was not guaranteed until it was declared, and the annual returns and final bonus together represented the total growth achieved by Mr D's contributions to the Plan over the period it was invested. Aside from bonus already accrued, the only guaranteed benefit was the GAR.

18. I have seen no evidence that Aviva manipulated the Plan in order to pay Mr D less income in retirement than would otherwise have been the case. I agree with the Adjudicator's view that investment returns in the Plan are not guaranteed and Mr D's entitlement can only be calculated in accordance with the Plan Rules.

19. In respect of Mr D's request to backdate his annuity payments to NRD, it was his choice to wait until his complaint was resolved before taking his benefits, rather than taking them at NRD. I agree with the Adjudicator that, under these circumstances, Aviva was within its rights to refuse his request to have his benefits backdated.

20. I do not uphold Mr D's complaint.

Anthony Arter

Pensions Ombudsman
05 February 2020