

The complaint

Mr A complains that Aviva Life & Pensions UK Limited wouldn't backdate his annuity payments to his pension's normal retirement date after it was deferred. He says they failed to make it clear he'd be financially worse off if he deferred his annuity.

What happened

The complaint is well known to both parties and as such I've only summarised the details here.

Mr A had a pension with Aviva that had a Guaranteed Minimum Pension (GMP) payable at age 65. But the plan had a normal retirement age (NRA) of 60. So, Mr A was able to take his benefits at age 60 albeit, at a reduced rate to the GMP which would become available at age 65.

Aviva sent Mr A a wake-up letter for his pension in April 2019, and another in August 2019 reminding him that he was approaching the NRA of his plan. In July 2019 Aviva also sent a retirement pack showing the options Mr A had for taking his benefits. However, this letter was sent to an advisor Aviva incorrectly held on record for Mr A. So, Aviva say it may not have been received by Mr A.

Mr A didn't claim his annuity at his NRA, so Aviva say his plan moved into deferment.

In early 2020 Mr A asked for another retirement pack and transfer valuation of his plan. And Aviva later received a transfer request from another provider. Although they declined the request as Mr A's plan didn't have enough funds in it to meet the GMP.

In August 2020 Mr A complained to Aviva. His complaint was that Aviva would not agree to backdate his annuity payments to when his plan reached the NRA the previous year. He said he wasn't aware these payments would be missed if the annuity was deferred.

In response to his complaint Aviva said they'd made an error by sending the retirement pack to an advisor in July 2019 instead of Mr A. They weren't able to see that the advisor was acting for Mr A at that time, so they sent Mr A a cheque for £150 for the inconvenience that caused. They said this figure included any conversion fees to local currency as Mr A lived abroad.

Aviva also said that so far Mr A hadn't requested them to set up the annuity. He'd asked for a transfer which wasn't possible. They said he hadn't lost out financially as his GMP was still increasing in deferment and they wouldn't backdate his payments to his NRA.

Mr A was unhappy with Aviva's response as he said he was entitled to a minimum level of guaranteed pension from age 60. So, he said he was owed around a years' worth of annuity payments. Mr A brought his complaint to our service.

Our investigator said it was fair for Aviva to have moved Mr A's funds into deferment when he hadn't applied to take his benefits by his NRA. And the quotes Mr A received

demonstrated his funds were increasing in deferment. He went on to say this was all in line with the policy documents Mr A had been supplied so he didn't think Aviva had done anything wrong by not agreeing to backdate his payments to his NRA.

Our investigator went on to say Aviva shouldn't have sent the retirement pack to an advisor in July 2019. But he concluded that the £150 Aviva had offered in this respect was fair compensation for the inconvenience and upset that caused.

Mr A disagreed with our investigator, so the case has been passed to me for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's clear to me that Mr A has continued concerns about the time it's taken to set up his annuity with Aviva while his complaint has been with our service. I must make it clear however, that this complaint focuses on the issues contained within the complaint he made to Aviva in August 2020 – their decision not to backdate his annuity payments to his NRA.

I say that because Aviva have not had the opportunity to respond to any concerns Mr A has about any possible delay once Mr A applied to set up his annuity payment. And so, our service hasn't been sent the required evidence to establish the facts of that possible delay or investigate them fully. If Mr A wishes to, he can speak to Aviva about the time it's taken to set up his annuity since they dealt with this complaint.

The issues for me to determine here are whether Aviva did anything wrong and, if so, what they should do to put things right.

When considering these issues where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

In the years leading up to Mr A's NRA I can see that he'd raised several concerns with Aviva about his pension plan. These communications show me that it's likely Mr A knew that he could access the benefits of his plan from age 60, albeit the full benefits of the GMP weren't available until age 65. And Aviva sent Mr A a wake-up letter in April 2019 to remind him that his NRA was approaching.

The wake-up letter explained Mr A had several options at his NRA and said he didn't *have* to take his benefits. It also said;

'If you're not ready to take your benefits yet, please call and let us know. We can explain what delaying your benefits means for you'

The letter also signposted Mr A to other useful information from Aviva and impartial guidance from the government's Pension Wise service.

I've seen no evidence that Mr A contacted Aviva to discuss what would happen to his benefits if he delayed them. But from Aviva's wake-up letter Mr A ought to have known that the option of not taking his benefits was available to him. Especially as he later didn't claim his benefits at his NRA.

Aviva acknowledged that Mr A may not have received the retirement pack in July 2019.

Which is disappointing as the retirement pack contained further information about deferring the benefits. But, as I've said, I think Mr A was already aware of the earliest at which he could claim his benefits – his NRA. If Mr A had wanted to claim his benefits at his NRA I would have expected to see him contact Aviva prior to that date to request information about his annuity. But I've seen no evidence that he did.

Aviva were also sent several requests from a new pension provider in early 2020 requesting that they transfer Mr A's funds to them. I think that adds further weight to show Mr A hadn't made up his mind on how to take his benefits at his NRA the previous year.

Mr A's NRA was the earliest age he could access his benefits. But that didn't mean he *had* to access his benefits at that time. I've not seen any agreement Mr A had with Aviva to say that was the case. And when Mr A didn't access his benefits Aviva moved his fund into deferment.

In March 2020 Aviva sent Mr A a letter explaining that if his retirement was delayed by more than seven weeks after his NRA, his GMP would increase by 1/7th of 1% for each complete week after his NRA. It also said the policy value at the NRA would be increased by the Bank of England base rate plus 1% until the benefits were taken.

Aviva made a mistake in failing to send Mr A the relevant retirement pack approaching his NRA. But the evidence I've seen makes me think that Mr A ought to have been expecting it. And knew what his NRA was. He knew what his entitlement was in claiming his benefits. And he didn't pursue that on reaching his NRA. I don't think that Aviva's failure to send Mr A the retirement pack meant that he received his annuity later than he would otherwise have done. So, I don't think that Aviva have to backdate the annuity payments. I don't think that's unfair as Mr A's funds and the GMP would have increased while he decided how to take his benefits.

I appreciate Mr A may feel that deferring his benefits wasn't good value for money - something which he feels Aviva should have pointed out to him. But Aviva weren't providing Mr A with any financial advice so they couldn't have given an opinion on that to him. Even if it may have appeared to them that Mr A might be worse off in the long run by deferring his pension.

Aviva did, however, make an error. They sent one of the retirement packs to an advisor Mr A says he does not know. I appreciate this must have been upsetting for Mr A to have had information about his retirement options sent to a firm that weren't advising him. But as I've said, I think Mr A was aware of his normal retirement date and could have made enquiries with Aviva if he wanted. So, I don't think their error caused any financial loss even though I can appreciate it upset Mr A to learn of Aviva's error.

Putting things right

Aviva have offered Mr A £150 compensation for the upset and inconvenience they caused by sending his July 2019 Retirement Pack to an adviser Mr A didn't know. The offer included conversion fees to local currency as Mr A lives abroad. In all the circumstances of this complaint, I think £150 is a fair offer as it broadly reflects the amount of upset caused. I say that because Mr A wouldn't have been aware of the error until Aviva pointed it out to him. so, I think the impact of the error wouldn't have lasted long.

Mr A lives abroad. He has concerns about the postal system and finds it difficult to pay in a cheque. So, I think it's reasonable for Aviva to give Mr A the choice of how he wants the compensation paid, either by cheque or bank transfer.

My final decision

My final decision is that I partially uphold this complaint and direct Aviva Life & Pensions UK Limited to pay Mr A £150 as I've set out above for the distress and upset they caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 6 February 2023.

Timothy Wilkes
Ombudsman