

## **The complaint**

Mrs D complains that Aviva Pension Trustees UK Limited (Aviva) didn't do enough to locate her when she reached the normal retirement date for her pension held with them in 2013. Mrs D says she was unaware of this pension with Aviva until 2024 and believes that she has lost out on past annuity payments because of Aviva's mistakes.

## **What happened**

The history leading up to this complaint is well known to the parties and therefore I have only summarised events below.

Mrs D complained to Aviva in April 2024 regarding their failure to properly trace her when she reached the normal retirement date (NRD) of her Aviva Section 32 plan in January 2013.

Aviva responded to the complaint and agreed that they could have done better and conducted a more in-depth trace to locate Mrs D's current address when it received correspondence from HMRC about her benefits in 2015. Aviva offered her £650 for the distress and inconvenience caused to her but explained that as a result of not taking her pension earlier, Mrs D was entitled to a substantially larger annuity, and they began the process of setting this up for her.

Mrs D wasn't satisfied with this response as she felt that she had lost out on 11 years of income as a result of Aviva's actions, so she brought her complaint to this service for an independent assessment.

On of our investigators looked into things and originally concluded that what Aviva had offered was fair. Mrs D provided further context regarding her sensitive personal circumstances up until 2024 which explained why she was unaware of this pension and didn't receive any correspondence Aviva sent to her old address. This ultimately persuaded the investigator that Aviva needed to do more. She reasoned that Aviva ought to have taken more action to locate Mrs D in 2015 and felt that if they had she would have taken her pension at that time.

Aviva didn't feel that this was appropriate as Mrs D would have received a lesser amount than she is currently entitled to. The investigator considered this but was persuaded by Mrs D's circumstances that she would have opted for the lower income in 2015 instead of a higher income now. the investigator then set out how Aviva should redress things.

Aviva didn't agree, maintaining that the lower income was a disadvantage to Mrs D, but Mrs D explained she had some health issues which would make it unlikely she'd live long enough to fully recover the lost pension she could have been receiving.

As an agreement couldn't be reached, the complaint has been passed to me for a final 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.

Having done so, I've reached the same outcome as the investigator and for broadly the same reasons.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Mrs D has said that she should have received her pension from 2013, when she reached her NRD at age 60. I've thought about this, but I don't agree. The letters issued to Mrs D in 2012 leading up to her NRD, were not returned to Aviva so I am not persuaded that they had any cause to believe that they weren't received. And generally, it is for the policyholder to keep her address details up to date. However, I understand that Mrs D didn't know she had this pension as she thought it was lost when her previous employer was liquidated.

Nevertheless, at this point, I'm not persuaded that Aviva did anything wrong in not pursuing contact with Mrs D when she didn't respond to the retirement options pack. There was no regulatory obligation on Aviva to try and find Mrs D in advance of the plan's maturity or when they didn't hear back.

However, in 2015 Aviva received a letter from HMRC detailing Mrs D's guaranteed minimum pension (GMP) available under her plan. This letter included a different address for Mrs D – which was her current address. Aviva wrote to Mrs D at the address they had on file and the one provided by HMRC, but they didn't hear anything back. I think this should have alerted Aviva to the fact there may have been an issue with Mrs D's address. In keeping with their obligation to 'treat customers fairly' – a requirement set out in the regulator's handbook, which requires Aviva to 'pay due regard to the interests of its customers and treat them fairly' I consider Aviva should have done more to trace Mrs D at this time. And notably, in their final response letter to Mrs D, Aviva admitted that they could have done more to locate her in 2015.

I am aware of services like the DWP tracing service, which have been available for many years and are very effective at providing current contact details. So, I think if Aviva had done more to locate Mrs D's correct address in September 2015, they would have been successful.

So I now need to decide how best to put things right.

I appreciate that Aviva feel that Mrs D has benefitted from the delay in accessing her pension as the annuity she is now entitled to is significantly greater than what she would have been entitled to at her NRD. However, in these circumstances, based on everything Mrs D had told this service, I am persuaded that it is more likely than not that had Mrs D been made aware of her Aviva pension in 2015, she would have opted to take her benefits at that time.

## **Putting things right**

My aim is that Mrs D should be put as closely as possible into the position she would probably now be in if things gone as they should have in 2015. In the absence of any evidence suggesting otherwise, I agree with our investigator that it would be reasonable that Aviva Pension Trustees UK Limited would have been able to locate and setup Mrs D's annuity within three months of receiving the letter from HMRC on 15 September 2015.

To work out the past payment loss, Aviva Pension Trustees UK Limited should calculate:

- A) Total of all the notional payments which Mrs D should have received from her pension, net of her marginal rate of tax, from 15 December 2015 until the date of my final decision.
- B) Total all the actual payments which Mrs D has received from her pension, net of her marginal rate of tax, from 15 December 2015 to the date of my final decision.
- C) Past loss = A – B. If the answer is negative, there is a past gain and no redress is payable.

In working out the net payments, Aviva Pension Trustees UK Limited should assume that Mrs D was a 20% rate taxpayer.

If the above calculation results in a loss, Aviva Trustees UK Limited should pay this amount to Mrs D as a lump sum. In addition, as Mrs D has been deprived of access to these funds, Aviva should pay 8% simple interest for each delayed payment until the date of settlement. Income tax may be payable on the interest.

I understand that Mrs D has applied to take her pension in 2024 but it is unclear whether this annuity has gone into payment. If the annuity has been arranged, Aviva Pension Trustees UK Limited will need to take action to restructure the annuity so that the appropriate amount is paid to Mrs D going forward.

Additionally, I consider the £650 compensation offered by Aviva Pension Trustees UK Limited to Mrs D for the distress and inconvenience this caused her, to be fair and reasonable in all of the circumstances of complaint.

If payment of compensation is not made within 28 days of Aviva Pension Trustees UK Limited receiving Mrs D's acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Aviva Pension Trustees UK Limited deducts income tax from the interest, it should tell Mrs D how much has been taken off. Aviva Pension Trustees UK Limited should give Mrs D a tax deduction certificate in respect of interest if Mrs D asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

## **My final decision**

I uphold the complaint. My decision is that Aviva Pension Trustees UK Limited should pay the amount calculated as set out above.

Aviva Pension Trustees UK Limited should provide details of their calculations to Mrs D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or

reject my decision before 22 April 2025.

Jennifer Wood  
**Ombudsman**