

## Ombudsman's Determination

Applicant	Mrs R
Scheme	Aviva Personal Retirement Policy
Respondent	Aviva Life & Pensions UK Limited ( <b>Aviva</b> )

## Outcome

1. Mrs R's complaint against Aviva is partly upheld. To put matters right, Aviva shall award Mrs R £500, in recognition of the significant distress and inconvenience she has suffered.

## Complaint summary

2. Mrs R has complained about the delay in Aviva settling her retirement benefits and has questioned the date that was used to disinvest her funds. In addition, Mrs R has raised concerns about the incorrect information provided in relation to a guaranteed annuity rate (**GAR**) that was applicable to her benefits.

## 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. Mrs R held three policies (**the Policies**) with Aviva; one of which had a GAR. Mrs R lived in New Zealand and employed the services of an independent financial adviser (**IFA**) based in New Zealand.
5. On 25 January 2018, following an information request, Aviva sent the IFA information regarding the Policies. In this Aviva confirmed that Mrs R did not have a GAR applicable to any of her benefits.
6. On 1 February 2018, Aviva sent the IFA a retirement illustration which confirmed that a GAR was applicable to one of the Policies.
7. On 3 March 2019, Mrs R wrote to Aviva requesting the necessary retirement forms to take her benefits from the Policies as a lump sum. Mrs R intended to use the lump sum to purchase a commercial property as part of her retirement plan.

8. On 20 March 2019, Aviva sent Mrs R a retirement illustration for each of the Policies (**the March Retirement Illustrations**). It said that, once Mrs R had read all the information and considered any guidance or financial advice, she should telephone Aviva with her decision. The notes on the March Retirement Illustrations said that:-  
  
“It is important to remember that some or all of your pension fund may have a GAR option.”
9. On 28 March 2019, Mrs R sent Aviva a signed authority form (**the Form**) to surrender her funds as a one-off payment. On the Form, Mrs R wrote that she did not have a personal bank account; so, she provided details of her business account. Aviva received the Form on 9 April 2019.
10. Aviva advised that it could not accept business account details and, on 15 April 2019, after opening a personal bank account, Mrs R provided these details to Aviva.
11. On 10 June 2019, Aviva sent Mrs R a letter requesting confirmation that she was happy to proceed with her chosen retirement option despite having a GAR applicable to some of her benefits. Mrs R received this letter on 27 June 2019.
12. On 14 June 2019, Mrs R raised a complaint with Aviva due to the length of time taken to process her retirement benefits.
13. On 4 July 2019, Aviva received confirmation from Mrs R that she was happy to proceed with her chosen retirement option. She said that she was aware that she had a GAR applicable to some of her benefits but was happy to take the lump sum and lose the GAR.
14. On 9 July 2019, Aviva transferred Mrs R’s retirement lump sum payment. Aviva added an increment payment to compensate Mrs R for the delay between 10 April 2019 and 9 July 2019. This amount was calculated using the Bank of England base rate plus 1% and totalled £306.95. The final amount paid to Mrs R, after tax, was £49,357.61.
15. On 16 July 2019, Aviva responded to Mrs R’s complaint. It said that:-
  - Although it had received all its requirements by 15 April 2019 it failed to proceed within its expected timescale.
  - Before payment could be made, and to comply with Financial Conduct Authority regulations, it issued Mrs R a warning letter regarding the GAR applicable to some of her benefits.
  - Due to the delay and in recognition of the inconvenience caused, it had paid £100 to Mrs R’s bank account.

### **Mrs R’s position**

16. The March Retirement Illustrations only stated that a GAR might be applicable to her benefits; Aviva never confirmed that one was applicable.

17. The IFA did not receive the letter Aviva sent in February 2018, which stated that she had a GAR applicable to some of her benefits.
18. As Aviva was not ready to proceed with the settlement of her retirement benefits until 4 July 2019, this is the date that should have been used to disinvest her funds.

### **Aviva's position**

19. Its procedural notes to determine the unit surrender date states:-

“Wherever possible, the date of unit surrender will be the working day following receipt of the policy holder’s instruction/completed forms.”
20. The letter sent in January 2018 stating that Mrs R did not have a GAR applicable to any of her benefits was sent in error and it apologised for this mistake.

### **Adjudicator's Opinion**

21. Mrs R's complaint was considered by one of our Adjudicators who concluded that there had been maladministration on the part of Aviva. The Adjudicator's findings are summarised below:-
  - Mrs R has complained about the date that Aviva used to disinvest her funds. Aviva's procedural notes set out the date that should be used when disinvesting the funds. The date that should be used is the next working day following receipt of the Form. Mrs R sent this on 28 March 2019, but as the Form was sent from New Zealand, Aviva did not receive this until 9 April 2019. So, Aviva correctly used 10 April 2019 to disinvest the funds.
  - Even though Aviva received the Form on 9 April 2019, the funds were not sent to Mrs R until 9 July 2019. Mrs R has also complained about this delay.
  - Despite Aviva requesting details of Mrs R's personal bank account, Mrs R provided details of her business account. This delayed the settlement of her retirement benefits until 15 April 2019. However, once in receipt of acceptable bank details, Aviva took no further action until 10 June 2019.
  - The delay of over 30 working days between receiving the updated bank details and contacting Mrs R regarding the GAR applicable to some of her benefits, amounted to maladministration.
  - Aviva contacted Mrs R regarding the GAR applicable to some of her benefits on 10 June 2019. However, Mrs R did not receive this until 24 June 2019. Aviva did not then receive Mrs R's confirmation to proceed until 4 July 2019. The reason for this delay would have been the time taken to deliver post from the UK to New Zealand. Aviva cannot be held accountable for this delay.
  - Aviva has accepted that there was a delay in settling Mrs R's retirement benefits. In recognition of this, Aviva calculated an increment payment to be added to the

final amount payable. This was calculated using the Bank of England base rate plus 1% from 10 April to 9 July 2019. So, Aviva included periods where the delay was not its fault. In the Adjudicator's view, the redress undertaken by Aviva more than adequately covered the potential financial loss suffered by Mrs R.

- Mrs R also raised concerns about the incorrect information Aviva sent in January 2018. Mrs R claimed she was not aware that any of the Policies had an applicable GAR. Despite Aviva sending a letter in February 2018 stating that a GAR applied to one of the Policies, Mrs R claims that neither her nor the IFA saw this letter. While this may be the case, Aviva later informed Mrs R that a GAR applied to one of the Policies on 10 June 2018. Mrs R acknowledged receipt of this and confirmed to Aviva that she was aware of the GAR applicable to some of her benefits and was happy to lose that benefit. Based on this exchange of correspondence, the Adjudicator could not see that Mrs R would have taken any different action or that there had been a financial loss.
- Despite not suffering a financial loss, Mrs R had suffered non-financial injustice. First, Mrs R received incorrect information in January 2018 and second, Aviva caused a delay in settling her retirement benefits. This would have caused Mrs R significant distress and inconvenience. So, it was the Adjudicator's view that an award of £500 would be more appropriate.

22. Mrs R did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mrs R provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mrs R. Mrs R said that:-

- Aviva had not been able to provide any evidence that it sent her a retirement illustration showing the benefit of her GAR.
- She is not disputing that she sent the email waiving her GAR benefit, however, she had done so thinking she did not have this benefit.

### **Ombudsman's decision**

23. Mrs R maintained that Aviva did not send her any evidence that her Policies had an applicable GAR. I disagree. The March Retirement Illustrations clearly said that some or all of Mrs R's Policies had a GAR. Further, Mrs R emailed Aviva to confirm that she was aware that there was a GAR but was happy to waive this benefit.
24. I see no reason why Mrs R would waive this benefit without knowing that she had it. Upon receiving such a confirmation request, it is reasonable to assume that Mrs R would question the GAR and what this entitled her to. I appreciate that Aviva has not been able to provide any evidence that an illustration had been sent showing the benefit of the GAR, however, there is sufficient evidence to suggest that Mrs R should have been reasonably aware that she had this benefit.

25. Mrs R did not raise any further concerns regarding the date used to disinvest her funds and the delay in settling her retirement benefits. I am satisfied that the financial loss redress undertaken by Aviva is more than adequate in the circumstances.
26. Nonetheless, Aviva's actions would have caused Mrs R significant distress and inconvenience. As Mrs R received incorrect information in January 2018, and Aviva delayed the settlement of retirement benefits, I find an award of £500 is sufficient in the circumstances.
27. I uphold Mrs R's complaint in part.

## **Directions**

28. Within 28 days of the date of this Determination, Aviva shall pay Mrs R £500, to take into account the £100 offered by Aviva if it has already been paid, for the significant distress and inconvenience she has experienced.

**Anthony Arter**

Pensions Ombudsman  
17 February 2022