

Ombudsman's Determination

Applicant	Mr I
Scheme	Give and Take Wholesale Limited Executive Benefits Scheme (the Scheme)
Respondent	Aviva Life & Pensions UK Limited (Aviva)

Outcome

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

Complaint summary

2. Mr I has complained that Aviva failed to send notification that he had reached the Scheme's normal retirement age (**NRA**) of 60. He contends that this caused him to miss the deadline for submitting an annuity claim, in order to retain his Guaranteed Annuity Rate (**GAR**) entitlement.

Background information, including submissions from the parties

3. Mr I is the owner of Give and Take Wholesale Limited, the employer linked to the Scheme, under which he accrued retirement benefits in his plan, (**the Plan**).
4. On 18 December 2017, Aviva, the administrator of the Scheme sent Mr I a benefit statement, including a note regarding the Plan that stated:-

“[The Plan] has guaranteed annuity rates (GARs) which apply if benefits are taken in line with the terms of the Plan conditions...This usually means the GARs available to you at your retirement date will be more favourable than the rates you would get from another pension provider at your retirement...”
5. On 21 May 2018, Aviva sent Mr I a retirement quotation setting out his benefit options upon reaching the NRA. In a covering letter, Aviva included its contact details and encouraged Mr I to raise any queries he may have.
6. On 31 July 2018, Aviva wrote to Mr I and said that he was approaching the NRA, so he needed to confirm his chosen retirement option. With regard to Mr I's GAR entitlement, Aviva also said:-

“Facts about guaranteed annuity rate options

You currently have [GARs] under the Plan which is a valuable benefit. Your guaranteed annuity rate may be linked to your [NRA] date of 22 October 2018...”

7. Aviva concluded the letter by stating:-

“Until we hear from you we will not send you a [retirement quotation], so please get in touch as soon as possible”

8. On 26 November 2018, Aviva wrote to Mr I and said:-

- For administrative purposes only, it had been assumed that Mr I wished to defer taking his pension up to age 75, since no response had been provided following the previous letters sent to him.
- Mr I’s GAR entitlement would only remain applicable if he made an annuity claim with Aviva by 22 January 2019.

9. On 19 December 2018, Mr I telephoned Aviva and complained that he had not previously been sent notification of his NRA nor made aware of the GAR entitlement that was linked to it.

10. On 20 December 2018, Aviva sent Mr I a retirement quotation that set out his benefit options and encouraged him to seek financial advice. Aviva also provided its telephone number and said that Mr I should call once he had made a decision.

11. Mr I says he received the retirement quotation on 9 January 2019.

12. On 10 January 2019, Mr I telephoned Aviva and requested a retirement quotation for benefits from the NRD reflecting the GAR entitlement.

13. On 11 January 2019, Mr I telephoned Aviva to confirm he had received a retirement quotation with a questionnaire regarding his tax-free cash entitlement (**the questionnaire**) and was still considering his options.

14. On 16 January 2019, Aviva wrote to Mr I in response to his complaint of 19 December 2018 and said:-

- Before Mr I reached the NRA two letters had been sent to him in 2018 regarding the GAR, but no response was received.
- A further reminder should have been sent to Mr I upon reaching the NRA, but no such correspondence was sent until around a month later.
- An incorrect enquiries email address was quoted in a letter sent to Mr I.
- A cheque for £150 would be sent to Mr I in recognition of the distress and inconvenience caused to him by this poor service.

- An extension until 15 February 2019 would be allowed for Mr I to send back the completed questionnaire.
 - On receipt of the questionnaire, interest would be added to Mr I's benefits for the late payment of the annuity instalments due from 22 October 2018.
15. On 21 January 2019, Aviva received the questionnaire back from Mr I.
16. On 23 January 2019, Aviva wrote to Mr I and said:-
- It had not been possible to process Mr I's annuity claim because some relevant pages had been omitted from the questionnaire when it was returned.
 - Salary details needed to be provided for the three-year period before 6 April 2006 (**A-Day**).
 - Mr I would need to send the relevant pages of the questionnaire appropriately completed.
17. On 1 February 2019, Mr I emailed Aviva to provide his salary details for the previous three years.
18. On 13 February 2019, Aviva emailed Mr I, requesting his salary details for the three-year period preceding 6 April 2006, and to confirm that the GAR deadline would be extended to 15 March 2019.
19. On 19 February 2019, Mr I emailed his salary details to Aviva in accordance with its letter of 23 January 2019 and email of 13 February 2019.
20. On 28 February 2019, Aviva emailed Mr I to acknowledge receipt of this information and apologised for the delay in replying.
21. On the same day Aviva sent a retirement quotation to Mr I setting out his tax-free cash lump sum allowance.
22. On 1 March 2019, Mr I emailed Aviva to ask for a further retirement quotation.
23. On the same day Aviva emailed Mr I to confirm that this information could only be provided once he had telephoned to go through a 'risk warning' call in accordance with guidelines set by the Financial Conduct Authority (**FCA**).
24. On 2 March 2019, Mr I emailed Aviva in response and said that he would be on holiday until 9 March 2019 and would complete the call upon his return on 11 March 2019.
25. On 13 March 2019, Mr I telephoned Aviva and its records of the call stated in summary that:-
- Mr I completed a 'risk warning' check during which his retirement options were discussed.

- Mr I confirmed receipt of a retirement quotation and said that he did not wish to seek financial advice.
 - Mr I said he had completed the questionnaire and was aware that he would lose the GAR entitlement unless he claimed an annuity by 15 March 2019.
 - Mr I was encouraged to apply for an annuity by email then post a copy before the deadline, in order for the GAR to be applicable.
 - Mr I asked for a retirement quotation, in order to apply for an annuity, but Aviva did not provide a timescale as to when it would be sent.
26. On 14 March 2019, Mr I telephoned Aviva to chase the requested retirement quotation and asked for a further 30-day extension to accept the quotation. In response Aviva said that the GAR entitlement would be honoured.
27. On 9 April 2019, Aviva sent Mr I a retirement quotation for his benefits payable from 5 April 2019 and said:-
- Mr I's request of 14 March 2019 for a retirement quotation with the GAR entitlement extended for another 30 days had been rejected.
 - Mr I was previously given an extension until 15 March 2019, which provided sufficient time for him to submit an annuity claim to utilise the GAR.
 - The latest retirement quotation was at market rate with no GAR.
28. On 2 May 2019, Mr I emailed Aviva and complained that:
- During the telephone call on 14 March 2019, he had received assurance from Aviva that the GAR entitlement would be honoured, because the delay in dealing with the annuity claim was not his fault.
 - He would like Aviva to review its subsequent decision not to pay his annuity with a GAR.
29. On 13 May 2019, Aviva wrote to Mr I in response and said:-
- The retirement quotation of 28 February 2019 confirmed a GAR expiry date of 15 March 2019.
 - No further extension to the GAR deadline would be allowed, due to the two previous occasions such extensions had been given.
 - During the telephone call on 14 March 2019, Mr I was incorrectly told that the retirement quotation he had asked for the previous day would include a GAR.
 - An award of £100 would be paid to Mr I within 5 days in recognition of the distress and inconvenience caused to him by this error.

- Aviva was unable to provide financial advice to Mr I during his annuity claim, so he had been encouraged to seek independent financial advice.

30. On 21 May 2019, Mr I emailed Aviva and asked for this decision to be reviewed

31. On 11 June 2019, Aviva wrote to Mr I in response and said:-

- A request was sent to Mr I on 1 March 2019 asking him to complete a 'risk warning' call.
- Mr I responded by stating that he was on holiday and would complete the required call upon his return on 11 March 2019.
- By the time Mr I actually telephoned Aviva on 13 March 2019, there was insufficient time in which to provide a further retirement quotation before the GAR deadline on 15 March 2019.
- As Mr I had also previously been given two other extensions to the GAR deadline, his request for a another was correctly denied.

32. On 13 November 2020, Mr I's representative, (**the representative**) emailed Aviva and said:-

- Mr I had considered the salary information he provided on 1 February 2019 to be sufficient in order to process his annuity claim.
- It was not until 13 February 2019 that Aviva said that Mr I was in fact required to provide salary details covering the three-year period before A-Day. This response could have been sent earlier.

33. On 19 November 2020, Aviva wrote to the representative and said:-

- A response should have been sent to Mr I within five working days of receiving his incorrect salary details, rather than the eight working days it actually took.
- So, there was a short delay of 3 days in sending a response to Mr I.
- Mr I had clearly received the questionnaire early in January 2019, but it took him until 19 February 2019 to provide appropriate salary details.

Mr I's position

34. Mr I says:-

- Aviva had failed to warn him in advance that the GAR expiry date was linked to his NRA.
- If he had not telephoned Aviva on 19 December 2018, no retirement quotation would have been provided, in order to claim the benefits.

- He was given extensions totalling three months from December 2018, in which to make an annuity claim and retain the GAR entitlement.
- Had Aviva contacted him before reaching the NRA and set out the information required in order to process his annuity claim, there would have been no delays.
- He had requested a retirement quotation before the GAR deadline on 15 March 2019, but Aviva failed to respond due to its own staffing issues.

Adjudicator's Opinion

35. Mr I'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 failed to contact Mr I immediately after he reached the NRA on 22 October 2018, in accordance with its normal procedures.
- Aviva also said that notification regarding the significance of this date was not sent to Mr I until around a month later in the letter of 26 November 2018. However, Aviva had previously written to Mr I on 18 December 2017, confirming the GAR entitlement and the link to his retirement date.
- In the Adjudicator's view the onus was on Mr I to contact Aviva before reaching the NRA, regardless of whether, or not, Aviva had written to him on or around 22 October 2018. Further, Aviva's letter of 26 November 2018 confirmed that the GAR deadline had been extended to 22 January 2019. In the Adjudicator's opinion, this response mitigated Aviva's failure to write to Mr I around his NRA.
- There was no requirement for Aviva to provide a retirement quotation to Mr I before his telephone call on 19 December 2018. Aviva had previously stated in its letter of 31 July 2018, that a retirement quotation would not be sent to Mr I until he requested one.
- Mr I said he received the retirement quotation with the questionnaire on 9 January 2019. This form specifically stated that Mr I should provide his salary details for the three-year period preceding A-Day.
- In the Adjudicator's opinion, it was then for Mr I to progress his annuity claim urgently and diligently. However, having received Aviva's letter of 23 January 2019, Mr I did not provide appropriate salary details until 19 February 2019.
- Aviva has acknowledged that its normal procedure after receiving incorrect salary details is to respond within five working days, rather than the eight working days it took in this instance. In the Adjudicator's view, although Aviva failed to comply with its own procedure for chasing the correct salary details, Mr I could have asked Aviva for clarification on the required information if he was unsure. This

would undoubtedly have prevented the delay caused by Mr I sending inappropriate salary details.

- That Mr I took from 23 January 2019 to 19 February 2019 to provide relevant salary details did not demonstrate any urgency on his part. The Adjudicator felt that, although Aviva failed to acknowledge receipt of this information until 28 February 2019, Aviva mitigated this delay on the same day by extending the GAR deadline to 15 March 2019.
 - In order to provide Mr I with a retirement quotation to his specification, and an annuity application form, Aviva required Mr I to complete a 'risk warning' call. Despite the known time limit, Mr I emailed Aviva on 2 March 2019, stating that he would complete the required call upon his return from holiday on 11 March 2019. Mr I did not then actually complete the 'risk warning' call until 13 March 2019. In the Adjudicator's opinion this was a further example of Mr I not treating his annuity claim with the required urgency.
 - Although Aviva initially confirmed, during the telephone on 14 March 2019, that Mr I's GAR entitlement would still be honoured on review it was established that Mr I had already been provided with three extensions to use the GAR. Aviva considered that it would not, in fact, be appropriate to allow another extension. In the Adjudicator's opinion there was no requirement for Aviva to give any further time for Mr I to complete an annuity application to retain the GAR entitlement.
 - Aviva awarded £100 to Mr I in recognition of the distress and inconvenience caused by the initial error and a further £150, partly for not contacting him upon reaching his NRA. The Adjudicator considered that Aviva's awards, totalling £250, were sufficient recognition of the non-financial injustice caused to Mr I.
 - In summary, the Adjudicator took the view that, while there were some delays beyond Mr I's control, Aviva mitigated these issues by providing sufficient extensions to the GAR deadline. It was then for Mr I to progress his annuity claim urgently and diligently. The Adjudicator did not believe that Mr I acted with appropriate alacrity as he initially provided incomplete salary information and then delayed completion of a 'risk warning' call until 13 March 2019.
 - Consequently, there was no possibility of Mr I submitting an annuity application before the final GAR deadline on 15 March 2019, and it was unreasonable of Mr I to claim that this was because of any staffing issues at Aviva considering the obvious time constraint resulting from his own actions.
36. Aviva accepted the Adjudicator's Opinion, Mr I did not, and the complaint was passed to me to consider. I agree with the Adjudicator's Opinion and note the additional points raised by Mr I.

Mr I's additional comments

- Aviva's correspondence of 21 May 2018 and 31 July 2018 included no indication that the GAR entitlement would be removed if he did not claim an annuity by 22 October 2018.
- It was not until after he complained on 19 December 2018 that Aviva agreed to extend the GAR deadline to 15 February 2019.
- The retirement quotation he received on 9 January 2019, stated that he should contact Pension Wise, since that was the only way he could receive financial advice, but he was initially unable to get an appointment within six months.
- Having eventually made an appointment with Pension Wise, he was told that Aviva had previously provided other members with six retirement options, but that was not the position in his case.
- Upon receiving Aviva's cheque for £150 in January 2019, he telephoned Aviva and was assured that he would not lose the GAR option and that the cheque was sent purely as a goodwill gesture.
- No instructions were provided with Aviva's letter of 23 January 2019 as to how the questionnaire should be completed, so he was unsure as to what information he needed to provide.
- After Aviva eventually explained that he was required to provide salary details for the three-year period before A-Day, he was unable to immediately locate relevant information, which caused a delay.
- Aviva's email of 1 March 2019 invited him to call and arrange a risk assessment at the earliest opportunity.
- Having returned from holiday on 9 March 2019, Aviva was closed until 11 March 2019, due to the Sunday between these dates. So, the earliest date he could have telephoned Aviva was 11 March 2019.
- During the call on 13 March 2019, Aviva incorrectly said that his NI Number had not been provided, as required. However this information had been sent in February 2019.
- During the telephone call on 14 March 2019, Aviva took full responsibility for processing his annuity claim and reassured him that he would not lose the GAR option.
- Had he sought financial advice in 2018 he would likely not have lost the GAR option by not claiming an annuity within the time limit allowed by Aviva.

Ombudsman's decision

37. Mr I complained that Aviva failed to send notification that he had reached the Scheme's NRA. He contends that this caused him to miss the deadline for submitting an annuity claim, in order retain entitlement to a GAR.
38. Mr I said that Aviva's correspondence of 21 May 2018 and 31 July 2018 gave no indication that the GAR entitlement would be removed if he did not claim an annuity by 22 October 2018.
39. In its letter of 18 December 2017, Aviva said, "[The Plan] has guaranteed annuity rates (GARs) which apply if benefits are taken in line with the terms of the Plan conditions...". Aviva followed this up with the letter of 21 May 2018, encouraging Mr I to make enquiries about his retirement options, and providing contact details for him to use. In the letter of 31 July 2018, Aviva again confirmed the GAR option and advised that this may be linked to Mr I's NRA. Aviva concluded this letter stating, "Until we hear from you we will not send you a [retirement quotation], so please get in touch as soon as possible."
40. Consequently, I find that Aviva took appropriate steps to inform Mr I of the GAR entitlement under the Plan, its link to the NRA, and the urgency with which Mr I should make related enquiries. I do not consider that it is reasonable for Mr I to claim that following Aviva's letters of 21 May 2018 and 31 July 2018, he had received no indication that the GAR entitlement was linked to his NRA.
41. I accept that it was Mr I's contact on 19 December 2018 that highlighted to Aviva that it had not followed its normal procedure in sending Mr I a letter when he reached his NRA, which then prompted a decision to extend the GAR deadline to 15 February 2019. However, while the failure to write to Mr I on or around his NRA does amount to maladministration this extension provided Mr I with further time in which to progress his related annuity application and thereby mitigated any delays that might have been caused by Aviva not writing to Mr I upon reaching his NRA.
42. Mr I submitted that the retirement quotation he received on 9 January 2019, stated that he should contact Pension Wise, since this was the only way he could receive financial advice, but he was unable to get an appointment within six months.
43. The retirement quotation that Mr I has referred to states:-
- "Impartial guidance from the government's Pension Wise service**
- You now have more options on what you can do with your pension savings.
We recommend you get guidance or advice to help you with this decision.
Pension Wise is a service from the government that offers free and impartial guidance..."
44. While there is reference to Pension Wise, I do not agree that this implied Aviva said Pension Wise was the only source of financial advice available to Mr I. Pension Wise was simply quoted as an optional provider of free and impartial advice.

45. Mr I said that having eventually made an appointment with Pension Wise, he was told that Aviva had previously provided other members with six retirement quotations, but this was not the position in his case. It is not possible to compare Mr I's position to that of any other member Aviva may have provided with retirement quotations because individual circumstances or preferences may have been different. This would not, in any case, have precluded Mr I from asking Aviva for additional retirement quotations had he wished to.
46. Mr I contended that Aviva's letter of 23 January 2019 provided no instructions as to how the questionnaire should be completed, so he was unsure as to the information he needed to provide. Mr I also said that when Aviva eventually explained that he was in fact required to provide salary details for the three-year period before A-Day, he was unable to immediately locate relevant information, which caused a delay. I consider that Mr I ought to have raised an enquiry with Aviva regarding the required salary details if he had found the letter of 23 January 2019 unclear. Had he done so there would not have been such a delay. Aviva cannot be held responsible that Mr I did not clarify what information was required or that he was then unable to locate the necessary information.
47. I find that Mr I's failure to submit an annuity application before the final GAR deadline, was ultimately due to his decision not to complete the required 'risk warning' either on the day he was requested to do so or immediately upon his return. Had he not made that choice and completed the 'risk warning' check promptly, there would undoubtedly have been sufficient time for Aviva to complete any administration relating to his annuity application and provide a suitable retirement quotation in the time permitted.
48. While I recognise that Aviva, during the telephone call on 14 March 2019, said that the deadline would be extended I find that it was not unreasonable, on review, for Aviva to subsequently withdraw this offer, considering the three extensions previously provided to Mr I, and his lack of urgency in his responses. I find there was no requirement for Aviva to extend the GAR deadline beyond 15 March 2019.
49. I find that Aviva's awards to Mr I totalling £250, are sufficient recognition of the distress and inconvenience caused by failing to contact Mr I on or around his NRA and the error during the telephone call on 14 March 2019.
50. I do not uphold Mr I's complaint.

Anthony Arter

Pensions Ombudsman
2 March 2022