

Ombudsman's Determination

Applicant	Mr A
Scheme	Jones Brothers Retirement Benefits Scheme (the Scheme)
Respondent	Aviva Life & Pensions UK Limited (Aviva)

Outcome

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

Complaint summary

2. Mr A has complained that Aviva failed to contact him in 2009, when he reached his retirement age of 65. Mr A says that as a result he was unaware of his entitlement to claim benefits under the Scheme until April 2019, causing him financial detriment.

Background information, including submissions from the parties

3. In 1978, Equity & Law, the Scheme administrator at the time, sent Mr A a closure statement, (**the closure statement**), which confirmed that:-
 - The Jones Brothers (Tools) Limited Pension and Life Assurance Scheme of which Mr A was a member had been wound-up.
 - A deferred pension of £1,068.42 a year would be paid by Equity & Law from age 65 on 15 April 2009 via a new policy under the Scheme.
4. A note in the closure statement also informed Mr A that, "Two months before your retirement date you should forward this form, [after] first completing the details required overleaf...It is very important that you keep this document in a safe place."
5. The third page of the document that accompanied the closure statement contained a request for information to be provided by Mr A when claiming his benefits.
6. On 29 May 2001, Mr A's financial adviser, (**the Adviser**) wrote to Sun Life, which had taken over as administrator of the Scheme, to ask for details of Mr A's benefit entitlement in the Scheme.
7. On 19 June 2001, Sun Life wrote to the Adviser in response and confirmed Mr A's benefit details in accordance with the closure statement.

8. On 4 November 2005, the Adviser wrote to Axa, the administrator of the Scheme at the time (who had taken over from Sun Life), asking for an update on Mr A's benefit entitlement in the Scheme.
9. On 10 November 2005, Axa wrote to the Adviser and confirmed Mr A's benefit details reflecting the details previously provided in the closure statement.
10. According to its records, Axa sent a letter to Mr A, during February 2009, confirming that he was approaching his normal retirement date (**NRD**).
11. On 15 April 2009, Mr A reached his NRD.
12. In 2012, Friends Life took over as administrator of the Scheme.
13. In 2017, Aviva became the Scheme administrator.
14. On 18 April 2019, Aviva wrote to Mr A and said that having reached the NRD in 2009 he could claim retirement benefits.
15. On 27 May 2019 and 28 May 2019, Mr A emailed Aviva and complained that it was unreasonable he had not received notification of reaching the NRD in 2009, and that this had caused financial detriment due to the resulting delay in paying his benefits.
16. In June 2019, Aviva sent a retirement quotation to Mr A, setting out his benefit options.
17. In October 2019, Aviva sent a further retirement quotation to Mr A with a related benefits claim form.
18. On 7 April 2020, Aviva wrote to Mr A in response to his emails of 27 May 2018 and 28 May 2019. In summary Aviva said:-
 - In February 2009, Axa sent a letter to Mr A, confirming that he was approaching the NRD.
 - Annual benefit statements had not been sent to Mr A because his annual deferred pension did not change each year. However, Mr A should have received the closure statement in 1978 for his safekeeping until reaching the NRD.
19. Attached to the letter of 7 April 2020 was a further retirement quotation which stated that:-
 - Mr A was entitled to a pension of £1,068.42 per [year] upon reaching his NRD. The backdated pension payments due from 15 April 2009 to 14 February 2022 inclusive would be paid as a one-off lump sum of £13,712.16 before tax. Interest of £706.60 would be added to that sum, so the total of the backdated pension payments plus interest was £14,418.76 gross.

- Mr A would have been able to claim a tax-free lump upon reaching the NRD, but more than 12 months had passed since that time, so that option was no longer available under HMRC regulations.
- In respect of future pension payments there were two additional options available to claim the remaining benefits:-
 - **Option A** – Trivial commutation of the ongoing pension for a lump sum of £14,191.26 gross, subject to qualifying conditions imposed by HMRC being met.
 - **Option B** – An ongoing pension of £1,068.42 per year gross, paid monthly in advance from 15 February 2022.

20. On 2 June 2020, Aviva sent Mr A a further retirement quotation and claim form that set out the same options but with updated figures.

Mr A's position

21. Mr A says:-

- By the time the Scheme was wound up in 1978, he had made contributions to the Scheme of around £1,000, which could not be refunded. In the years that followed, administration of the Scheme was passed between various companies including Equity & Law, Friends Life and Aviva, none of which confirmed his deferred benefit entitlement.
- He did not receive the letter confirming his retirement date that Aviva said was sent by Axa in February 2009. In the period between February 2009 to April 2019 more attempts should have been made to contact him. The effects of inflation had caused the value of his retirement benefits to reduce during the 10-year payment delay.
- If normal procedures had been followed by Aviva and the previous administrators of the Scheme, his retirement benefits would have been paid as a one-off lump sum. So, payment of the retirement benefits should no longer be subject to normal HMRC regulations.
- Having to repeatedly make complaints about these issues has caused him distress and inconvenience.

Aviva's position

22. Aviva say:-

- There was no requirement for annual benefit statements to be sent to Mr A because his policy in the Scheme was a “wound-up, deferred annuity with a fixed annual pension payable from his NRD”.

- A letter was sent to Mr A at his home address in Spain in February 2009, confirming that he was approaching the NRD, but no response was received. In May 2019, a letter was successfully sent to Mr A setting out his retirement options of either an ongoing pension or trivial commutation.
- When the original Jones Brothers (Tools) Limited Pension and Life Assurance Scheme was wound-up, fixed defined benefit (**DB**) entitlements were secured via deferred annuities in the Scheme for each member. Aviva does not automatically send reminders to any such policyholders upon reaching the NRD or having passed it. However, in 2019 Aviva completed a project during which retirement 'wake-up' letters were sent to all members who had passed the NRD confirming that they had unclaimed benefits.
- Aviva is unable to pay Mr A's pension arrears plus a lump sum covering another 10 years of payments in advance of the due dates, as he has suggested. That process would require the ongoing pension payments to be delayed for 10 years in breach of HMRC tax regulations.

Adjudicator's Opinion

23. Mr A'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:-

- The Adviser asked Sun Life for details of Mr A's benefit entitlement in the Scheme on 29 May 2001 and a response was sent on 19 June 2001. Then on 4 November 2005, the Adviser wrote to Axa, which had taken over administration of the Scheme, asking for an update on Mr A's benefit entitlement, and a response was sent on 10 November 2005. Both responses sent to the Adviser confirmed Mr A's benefit entitlement and the NRD.
- The closure statement sent to Mr A in 1978 included a note to the effect that the document should be kept safely, and it included the same benefit information that was subsequently provided to the Adviser on two occasions. Consequently, in the Adjudicator's opinion the details of Mr A's deferred pension entitlement and his NRD ought to have been known to him before he received Aviva's letter of 18 April 2019, even if he did not receive Axa's letter of February 2009.
- In the Adjudicator's view there was no requirement for Aviva to provide annual benefit statements to Mr A or confirm that he could claim benefits before the letter of 18 April 2019 was sent, or even at that date. So, there was no evidence of maladministration by Aviva that had caused a delay in Mr A claiming his retirement benefits under the Scheme.
- Aviva is required to pay Mr A's benefits in accordance with HMRC regulations, not to do so would result in it making an 'unauthorised payment' that could result in tax penalties being imposed on the Scheme and Mr A. In the Adjudicator's

opinion, Mr A no longer qualifies to claim all his benefits as a one-off lump sum, so there is no requirement for Aviva to pay the pension in that way. Aviva has correctly written to Mr A providing viable options that are in keeping with HMRC regulations.

24. Aviva accepted the Adjudicator's Opinion, Mr A did not, and the complaint was passed to me to consider. Aviva and Mr A provided their further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr A and Aviva.

Mr A's additional comments

25. The various administrators of the Scheme, particularly Aviva, failed to assess his details and contact him regarding his benefit entitlement upon reaching his NRD. There is no evidence of a letter being sent to him in February 2009, and Aviva has not been able to provide a copy of any such correspondence. There is also no record of any further attempt by Aviva or Friends Life to contact him regarding this matter, until Aviva's letter of 18 April 2019. Despite holding records of his home address and having the availability of computerised technology, Aviva still failed to contact him around the time he reached his NRD.
26. When he made a claim for payment of his benefits in 2021 he asked Aviva to pay the pension arrears plus 10 years' worth of advance instalments then suspend further payments during this 10-year period. In response to his request, Aviva asked him to provide a bank statement plus his wife's birth certificate and marriage certificate to process his claim. However, when he subsequently sent this information, Aviva said the format in which he had asked for the benefits to be paid was not feasible. So, it was unclear why Aviva had asked him to provide the requested documents if there had been no intention to pay the benefits. All these issues amount to poor service by Aviva in dealing with his pension.

Aviva's additional comments

27. The only time that Mr A completed a claim form was on 26 April 2019, but he failed to provide a bank statement in addition to his wife's birth and marriage certificates, as required to process the benefits claim. Due to living overseas a copy of a bank statement showing Mr A's name, address and account details had been requested from him. However, Mr A provided a screenshot of details for a different bank account to the one shown on the benefits claim form, and the screenshot did not confirm his name and address. The requested birth and marriage certificates have also never been sent by Mr A.
28. In 2020, Mr A asked for his retirement benefits to be paid in a lump sum of arrears plus 10 years of advance instalments then suspend further payments for the same period. This method did not comply with HMRC regulations. So, in April 2020 an appropriate retirement quotation was sent to Mr A, but he did not complete a further claim form, either in 2020 or 2021. In May 2022, Mr A telephoned Aviva to ask for an updated retirement quotation. During the call it was explained to Mr A that he could

not claim the benefits over the telephone; he was required to send a bank statement, his wife's birth and marriage certificates, and a completed claim form to receive his pension.

Ombudsman's decision

29. Mr A complained that the various administrators of the Scheme, particularly Aviva, failed to assess his details and contact him regarding his benefit entitlement from the Scheme upon reaching his NRD in 2009. It was not until he received Aviva's letter of 18 April 2019 that he was notified that he had reached his NRD. He argued that there is no evidence of a letter being sent to him in February 2009 and highlighted that Aviva is unable to provide a copy of any such letter.
30. Given that Aviva did not take over the administration of the Scheme until 2017, it is unsurprising that it is unable to provide a copy of a letter sent some eight years previously by Axa, the administrator at the time. However, I note that the closure statement and the letters sent to the Adviser on 19 June 2001 and 10 November 2005 included information about Mr A's benefit entitlement under the Scheme and confirmed his NRD. Consequently, Mr A ought to have been aware of these details, even if he did not receive the letter sent in February 2009. Further, there was no requirement for Aviva to write to Mr A, either in April 2019, or earlier to confirm that he had passed his NRD and could make a retirement claim. Consequently, I find that there was no maladministration by Aviva, and it cannot be held responsible that Mr A did not claim his retirement benefits in 2009.
31. Mr A said that when he eventually made a retirement claim in 2021, and he asked for the pension arrears to be paid as a lump sum in addition to 10 years of advance instalments, and for further payments to be suspended during the same period Aviva then asked him to provide additional documentation including a bank statement plus his wife's birth and marriage certificates. However, when he subsequently enquired about payment, having provided these documents, Aviva said that the format of payments he had suggested was not feasible since it did not comply with HMRC regulations.
32. Aviva contends that the only time that Mr A completed a claim form was on 26 April 2019, but that he failed to provide an appropriate bank statement in addition to his wife's birth and marriage certificates, as required to process the benefits claim. Aviva said that it was in 2020 that Mr A asked for his retirement benefits to be paid in a format that did not comply with HMRC regulations.
33. Aviva can only provide options for payment of Mr A's retirement benefits in accordance with HMRC regulations. Accordingly, Aviva has provided appropriate options in the retirement quotations sent to Mr A in: June 2019; October 2019; April 2020; and June 2020. Aviva is not permitted to pay the benefits in the format Mr A would like and to do so would be in breach of HMRC tax regulations and result in an unauthorised payment and tax penalties to both Mr A and the Scheme.

34. In relation to the documentation required, Aviva has confirmed that under its normal procedures Mr A was required to complete a claim form and provide a bank statement showing the same address details as quoted in the claim form in addition to his wife's birth and marriage certificates in order to pay the benefits. This applies to benefits paid in any format. Mr A has provided no evidence in support of his assertion that he complied with those requirements in 2019, 2020 or 2021.
35. In summary, I find Aviva was correct not to pay Mr A his benefits in the format he requested and there is no evidence of Aviva delaying payment of Mr A's retirement benefits under the Scheme.
36. I do not uphold Mr A's complaint.

Anthony Arter

Pensions Ombudsman
30 June 2022