

Ombudsman's Determination

Applicant	Miss E
Scheme	Aviva Group Personal Pension Plan (the Plan)
Respondents	Aviva UK Life (Aviva), Community Integrated Care (CIC)

Outcome

1. Miss E's complaint is upheld, and to put matters right Aviva shall pay Miss E £500 for her significant distress and inconvenience.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Miss E's complaint against CIC concerns its delay in applying her pension contributions to the Plan, and her complaint against Aviva is about the inconsistent information that Aviva gave her regarding the detriment caused to the Plan by that delay.

Background information, including submissions from the parties

4. Miss E joined the Plan on 1 May 2014 after commencing employment with CIC, a health and social care charity. CIC arranged to deduct pension contributions from her pay on the 28th day of each month.
5. In accordance with statutory requirements, CIC was required to pay the contributions to Aviva, its pension provider, by the 22nd day of the month following the month in which the contributions had been deducted from her pay.
6. In August 2015, after receiving an annual benefit statement from Aviva, Miss E complained to CIC and Aviva because she thought her pension fund should have a higher value, and she suspected that some of her contributions had been paid late or were missing.
7. Aviva investigated the matter and informed Miss E that the contributions for several months had been paid late by CIC. In an email to Miss E dated 13 November 2015, Aviva calculated Miss E's loss as £755, assuming (incorrectly) that the contributions should have been paid to the Plan on the first day of each month.

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8. From 29 February 2016 Miss E went on sick leave certified by her doctor.
9. On 20 April 2016 Aviva told Miss E that it had recalculated her loss as £55, based on the correct payment deadlines. (This sum was paid into the Plan by CIC on 22 May 2017).
10. Miss E resigned from her job on 23 May 2016, and later that year claimed unfair dismissal.
11. In a letter to Miss E dated 19 August 2016, Aviva apologised for giving her misleading and confusing information, and told her that her financial loss due to the late contributions was £84. Aviva sent Miss E a cheque for £50 for its poor service, which she refused to cash. Aviva also enclosed a CD of the calls that Miss E had made to Aviva.
12. In March 2017 an employment tribunal hearing found that CIC had unfairly dismissed Miss E. CIC was ordered to pay Miss E substantial damages for unfair dismissal, disclosures improperly made, breach of contract, costs and tribunal fees. No order was made in respect of her pension contributions complaint.
13. After Miss E contacted the Financial Ombudsman Service, the matter was referred to this office. We asked both CIC and Aviva to provide formal responses.
14. In its response, CIC admitted that it had paid Plan contributions late (on average by 28.5 days) between May 2013 and September 2016; the average delay between September 2015 and September 2016 was reduced to two days. CIC explained that the delay was due to the introduction of auto enrolment and some teething problems with CIC's new payroll system. It had told Miss E that due to poor market conditions "this impact was likely to be minimal" and it had paid £55 into the Plan, the loss calculated by Aviva in April 2016. CIC added that "we would not envisage relatively small values arising on late payments to warrant any further action."
15. In its response, Aviva provided a detailed analysis of the contributions paid between 2013 and 2016. It agreed that there was a financial loss caused by CIC's late payment of contributions from 2014 to 2016. It said that unfortunately it could not trace a breakdown of the previous assessments of loss; this could be recalculated, but it was awaiting confirmation that CIC was willing to pay the additional amount. Aviva admitted that its earlier communications with Miss E could have included more detail to explain how the financial loss had been calculated.
16. Miss E complained that it had taken Aviva two years to provide a detailed response, as she had informed Aviva on the telephone in October or November 2015 that the calculations should be based on a payment date of the 22nd day of the month.
17. Aviva provided a CD recording of various phone calls that Miss E made to Aviva in 2015 and 2016. Unfortunately, the CD was lost, through no fault of Miss E. Aviva subsequently provided this office with an audio file of relevant phone recordings, but there was no record of a call in October or November 2015.

18. Miss E also said she had incurred legal costs of over £6,500, and that CIC had breached the Pensions Regulator's guidelines for the timely payment of contributions but had not notified her of the breach; as she had raised the late payment issue with CIC in August 2015; it had taken over one year to resolve the matter. Miss E also complained that in its response CIC did not seem to be taking the matter seriously enough.
19. In subsequent correspondence with this office, Aviva said it would be willing to pay Miss E a total of £300 for her distress and inconvenience. She refused that offer and said that Aviva had not disclosed all relevant telephone recordings and had handled the problem badly.
20. CIC said it would be willing to pay what it described as "the outstanding shortfall of £55", but said that in view of the substantial awards made by the employment tribunal it did not consider that it should pay Miss E further compensation.
21. Miss E made a transfer from Aviva to a new pension provider (St James's Place) of about £27,150 on 19 December 2017, and requested that her financial loss should include the lost investment opportunity following that transfer. Aviva recalculated her financial loss as approximately £71 up to 19 December 2017. CIC confirmed that it would be willing to pay that amount.
22. St James's Place calculated that Miss E's investment return for the period between the transfer in December 2017 and 15 February 2019 was about 1.16%.

Adjudicator's Opinion

23. Miss E's complaint was considered by one of our Adjudicators, who concluded that further action was required by Aviva and CIC. The Adjudicator's findings are summarised below:-
 - Aviva and CIC had agreed that Miss E's contributions to the Plan were paid late, and therefore she had suffered a loss of investment opportunity while the contributions were awaited, so there was no dispute that there had been maladministration and that Miss E had been disadvantaged as a result. In correspondence CIC had downplayed the significance of a series of small late payments, but these did have a cumulative effect.
 - In order to put Miss E into the financial position she should have been in, had no payment delays occurred, CIC should pay to St James's Place the amount representing Miss E's financial loss. Applying the investment return of 1.16% to the financial loss of £71 that was calculated by Aviva resulted in an underpayment of £72, which the Adjudicator considered CIC should pay, with interest to the date of payment.
 - Apart from financial loss, it was clear that this protracted matter had caused Miss E significant distress and inconvenience. Aviva produced a number of

different calculations of loss, some incorrect as they were based on the wrong payment dates and did not provide a detailed analysis of its calculations until this office became involved. There were also problems with providing all its telephone recordings. Aviva had admitted that its service was of a lower standard than expected, and eventually offered to pay Miss E £300. However, the minimum award that the Pensions Ombudsman made for significant distress and inconvenience was £500. The Adjudicator considered that in the circumstances the Pensions Ombudsman was likely to make an award of £500 against Aviva.

- On balance, bearing in mind that in this case the financial loss caused by CIC's delayed payments was comparatively small, and would be rectified, the Adjudicator did not think the Pensions Ombudsman would also make an award of £500 against CIC for distress and inconvenience.
- Miss E wanted to reclaim her legal costs. However, these were incurred in relation to her successful employment tribunal claim against CIC, which related to other matters. Therefore, the Adjudicator would not expect the Pensions Ombudsman to make any award to her for legal costs. There was no charge for submitting complaints to us, and they did not need to be accompanied by legal submissions.
- In conclusion, it was the Adjudicator's opinion that the complaint should be upheld against CIC, because it paid Miss E's contributions to the Plan later than required, resulting in lost investment opportunity for her, and the complaint should also be upheld against Aviva, as the level of service that it provided to Miss E in seeking to address and rectify the problem was unsatisfactory.
- To put matters right, the Adjudicator considered that within 21 days of the finalisation of his Opinion
 - CIC should pay to St James's Place for the benefit of Miss E's current pension account £72, plus interest from 15 February 2019 to the date of payment, calculated in accordance with the reference banks, and
 - Aviva should pay Miss E £500 for her significant distress and inconvenience.

24. Aviva and CIC accepted the Adjudicator's Opinion, but Miss E did not. CIC paid £72 to Aviva on 20 March 2019. The complaint was then passed to me to consider. Miss E provided her further comments which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Miss E for completeness.

25. Miss E said that in her view Aviva and CIC were equally responsible for her significant distress and inconvenience; Aviva had taken the matter more seriously than CIC and had accepted some accountability for its poor service, whereas CIC

had been “arrogant and dismissive of the concerns raised”. Miss E considered that each of CIC and Aviva should pay her compensation of more than £500.

Ombudsman’s decision

26. With regard to Miss E’s comments, I consider that there were errors and delays on the part of both CIC and Aviva. Contributions for Miss E were paid late by CIC from May 2013 to September 2016. Miss E first raised her concerns in August 2015. CIC had to rely on Aviva to calculate the financial loss for CIC to remedy, but Aviva miscalculated the financial loss in November 2015. It was not until April 2016 that Aviva provided the correct calculation, which CIC paid in May 2017. Miss E’s subsequent financial loss since her transfer from Aviva to St James’s Place in 2017 was calculated as £72. CIC paid that amount following receipt of the Adjudicator’s Opinion. I consider that the financial loss has been remedied and that no further interest should be payable.
27. Apart from financial loss, there is also the question of non-financial injustice caused by CIC and Aviva. I agree with the Adjudicator that Aviva should make an award to Miss E for her distress and inconvenience caused by the manner in which it investigated her complaint, and the time it took. The parties were dependent on Aviva to make correct calculations of Miss E’s financial loss. £500 is the sum that I award in cases of significant distress and inconvenience, and I consider that amount to be appropriate here as Miss E has suffered significant distress and inconvenience. Miss E would like me to award her a greater amount against Aviva, but I do not think that is appropriate in the circumstances.
28. Miss E would also like an award to be made against CIC and has expressed the view that £500 would be inadequate. However, mindful that Miss E’s financial loss (recently remedied by CIC) was a comparatively small amount, I consider that it would be disproportionate to make two awards of £500 (or more) to Miss E. As I am already making an award against Aviva I will not make a further award against CIC. Although, Miss E has suffered some distress and inconvenience through the way in which CIC dealt with her pension payments, I do not consider it to be significant.
29. Therefore, I uphold Miss E’s complaint against Aviva.

Directions

30. Within 21 days of the date of this Determination Aviva shall pay Miss E £500 for her significant distress and inconvenience.

Anthony Arter

Pensions Ombudsman
16 May 2019