PO-19084

Ombudsman's Determination

Applicant	Mrs L
Scheme	Aviva Group Personal Pension Plan (**the GPP**)
Respondent	Aviva

Outcome

1. Mrs L's complaint is upheld and, to put matters right, Aviva shall pay Mrs L £500 for the significant distress and inconvenience she has suffered.

2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mrs L complains about the inconsistent information she has received regarding the date her contributions were paid to Aviva and subsequently invested. She also questions the charges that have been applied for administering her pension.

4. Mrs L says that she does not have confidence that the information she has received from Aviva is accurate.

5. In making her complaint to this Office, Mrs L is being represented by her husband, Mr L.

Background information, including submissions from the parties

Background

6. On 5 May 2000, Mrs L joined the GPP, a group personal pension plan arranged by her employer, David Jones & Company (**the Employer**). The GPP is provided and administered by Aviva.

7. An independent financial adviser (**IFA**), Sigma Asset Management, was involved in establishing the GPP. I understand that the appointment of the IFA was arranged by the Employer.

8. Mrs L has said that when she joined the GPP, in 2000, she was informed that there would be the opportunity to join a stakeholder plan in 2001. But the recommendation

at that time was to join the GPP as she could switch to the stakeholder plan, when it became available.

9. Since 6 April 2001, charges to the GPP have been capped at a maximum of 1% per annum, in order to comply with the stakeholder terms on charges. Any charges in excess of the 1% cap are rebated back into the GPP.

10. Contributions to the GPP are comprised of employer contributions, funded by the Employer, and personal contributions, paid for by a deduction from Mrs L's salary. Contributions are sent by cheque to Aviva from the Employer under what is known as a direct payment arrangement.

11. Contributions were originally due on the 5th day of each month. In March 2010, the due date changed to the 28th day of each month.

12. In March 2010, following the acquisition of several life and pension companies, Aviva consolidated a number of its legacy products onto a single computer (IT) system. The GPP was included in the transfer to the new IT system but, as I understand it, this led to the loss of some of the detailed transactional information about the GPP which had historically been available.

13. Between 2000 and 2013, Mrs L contacted Aviva on several occasions, in writing and by telephone, seeking clarity about the contributions being made to the GPP and the charges that applied.

14. On 1 April 2010 Aviva supplied a fund movement history that showed all payments as up to date and indicated that investments had been made at the right time.

15. In around 2013, Mrs L became aware that several of the monthly contributions to the GPP had not been paid on time. The delays were for periods of up to ten months. This caused her to question in greater detail the information she had previously received from Aviva, because she doubted that the premiums had in fact been paid to Aviva and allocated on their due dates. Her concern throughout was to understand whether the late payment of contributions by her employer had caused her financial loss.

16. On 19 January 2015 Mrs L complained to Aviva and asked it to explain discrepancies in various 'movement history' documents which had been sent to her, one in 2010 and another in 2013. She observed that she knew that her employer had made contributions late during the period documented and yet the schedules which had been provided to her showed the contributions correctly allocated (ie at due dates). She explained that she had been told that contributions were in fact allocated when received, that she had serious concerns about whether her records were right, she was soon to retire, and she wanted a full transaction statement. She asked for each contribution paid more than two weeks late would Aviva calculate the number of units that would have been purchased by each late payment if received at the correct time.

17. In February 2015 Aviva responded with a corrected fund movement history document for 5 May 2000 to 1 April 2010, which recorded an 'effective date' which was always the due date, and a premium history from 28 March 2010 up to 28 October 2014 'which is the most recent payment we have received from your employer'. This showed due dates and received dates and marked differences between the two.

18. Not satisfied with the information provided, Mrs L asked TPAS for help in obtaining a full reconciliation from Aviva showing the date and amount of contributions received, the amount invested, the unit price, units purchased, due date and unit price at due date. Aviva agreed to provide the information.

19. Internal correspondence dated 26 November 2015 sets out how the premium collection and reconciliation process had been working to date as follows:

> "the admin team have/are chasing for the outstanding premiums on an ad hoc basis when the Arrears tasks are logged by report and control. It does appear when prompted the company do pay the contributions.

20. Historically these cheque and schedule schemes have paid the premiums late believing they had to the 19th of the following month, in line with the TPR Regulations. However, with this scheme there are a number of occasions where 3 months premiums are being received together, normally after the arrears letter has been issued…. The last arrears letter appears to have been sent in June 2015, chasing for March, April and May 2015 and Mrs [L] was advised in June of the outstanding premiums; the outstanding payments were received after the chaser. I have asked the premium team to log an OPUS task to chase the outstanding premiums from July." Aviva audited the account again in 2017. On 2 February 2017 Aviva gave Mrs L its final decision letter with a full reconciliation record. This apologised for incorrect information provided in the past, which Aviva said was due to system mismatches. It told Mrs L that the new reconciliation was the true position calculated by the company actuary. It explained the allocation rates and the arrears process. Aviva admitted it had made errors with the arrears process and said it had added units so that the policy was now in the correct position.

21. As part of her enquiries, Mrs L asked Aviva to provide historic fund prices. Aviva informed her that she could find this information on its website. But, despite searching, she was unable to locate the information, even after repeated assurances from Aviva that the information was there. Aviva subsequently provided the fund prices that Mrs L needed.

Summary of Mrs L's position

22. Mrs L has concerns about the accuracy of the information Aviva has provided. She considers that she continually receives contradictory information and has no faith in the figures provided.

23. Mrs L would like to be compensated for the time and effort spent in to trying to determine the correct position of the GPP.

Summary of Aviva's position

24. On 18 February 2015, Aviva wrote to Mrs L enclosing a transaction history. It also offered Mrs L compensation of £250 in respect of the distress and inconvenience she had experienced.

25. Following the involvement of The Pensions Advisory Service (**TPAS**), Aviva agreed to carry out a full audit of Mrs L's GPP. Having done so, Aviva concluded that generally her transaction history was correct. However, Aviva identified a few discrepancies which it corrected by adding additional units to Mrs L's GPP.

Adjudicator's Opinion

26. Mrs L's complaint was considered by one of our Adjudicators, who concluded that Aviva should pay Mrs L an additional £500 for the significant distress and inconvenience she had suffered. The Adjudicator's findings are summarised briefly below: -

- The Adjudicator took the view that there were some parts of Mrs L's complaint which this Office could not investigate. This was because the application was received outside the three-year time limit under part 5(1) of the Personal and Occupational Pension Schemes (Pension Ombudsman) Regulations 1996 (SI 1996 No. 2475), (**the Regulations**).

- In particular, the Adjudicator said among Mrs L's concerns, the following were outside of my jurisdiction: that she did not receive a 'cooling off' notice, nor any other post sale documentation; that she was not informed about commission payable to the IFA; and, that she may not have been offered the most competitive product.

- At the heart of Mrs L's complaint is her concern that contributions are being paid late by the Employer. Indeed, it does not seem to be disputed that the Employer did pay several of Mrs L's contributions late. However, that is a separate matter which would need to be taken up directly with the Employer.

- The Pensions Ombudsman is not an actuarial service and does not routinely check pension administrator's calculations. Thus, this Office cannot provide an actuarial reconciliation of Aviva's calculations. Instead, the Adjudicator said the investigation would focus on whether there have been any administrative errors.

- From 6 April 2001 until 6 April 2005, the managers of a GPP were required to notify the Occupational Pensions Regulatory Authority (**Opra**) of any contribution which had not been paid by the 19th day of the month following that in which the deduction for the contribution was made from the employee's earnings (**the due date**). In addition, the managers were required to notify members, in writing, and within 90 days after the due date, about any such contributions which remained unpaid 60 days after that due date.

- On 6 April 2005, following the implementation of the Pensions Act 2004, Opra was replaced by The Pensions Regulator (**TPR**). At this point, the reporting requirements in relation to unpaid contributions changed. The reporting requirements now operate in conjunction with a Code of Practice, issued by TPR, which came into force on 30th May 2006.

- Post April 2006, where a contribution, payable under the direct payment arrangement, had not been paid on or before its due date, and the manager of the pension has a reasonable cause to believe that the failure to pay the contribution is likely to be of material significance, the manager must notify both TPR and the employee within a reasonable period.

- TPR's Code of Practice states that a payment that is outstanding for more than 90 days would generally be considered 'material'. Further, if the employer's administrative failures appear to be systemic, a late payment for this reason would also be considered 'material'.

- On 18 February 2015, Aviva wrote to Mrs L enclosing a 'premium history' document covering the period 28 March 2010 to 28 October 2014, being the date of the most recent payment made to Aviva by the Employer. This document showed the due date of each contribution alongside the date it was received by Aviva. It is evident from the document that many of the contributions made by the Employer, were not made by the relevant due date. Moreover, the frequency at which the payments were made late, is indicative of a systemic problem with the Employer. The Adjudicator's view was that the history of repeated late payments ought to have been considered as materially significant and TPR and Mrs L should have been notified.

- Aviva was not able to provide any evidence that such referrals were made to TPR, as required by the Pensions Act 2004 and TPR's Code of Practice. Aviva also conceded that it failed to properly notify Mrs L of the late payment of some of the contributions.

- The Adjudicator concluded that the failure to notify TPR, and to inform Mrs L that employer contributions had been paid late, was an administrative error.

- There is an argument to say that if Mrs L had been aware of the late payment of contributions, she could have exerted pressure on the Employer to pay these on time. But the Adjudicator was not persuaded that Mrs L's influence would have guaranteed that this would happen. Consequently, the Adjudicator did not conclude that Aviva's failure to notify Mrs L of the late payment of contributions had resulted in a financial loss.

- Aviva was unable to produce a copy of the original terms and conditions for Mrs L's GPP. But it did provide a generic copy of the terms and conditions which relate to this type of arrangement. Aviva also confirmed that within the GPP, "the units purchased and priced are as at the date the premiums are received by

Aviva." The Adjudicator considered this to be reasonable since it does not conflict with the terms and conditions of the GPP and is in line with the way in which arrangements of this nature typically operate.

- As a result of the delayed receipt of employer contributions, Aviva had assumed that the plan had been made 'paid up'. Several letters were automatically generated and issued to Mrs L informing her that the plan had been made 'paid up'. This would have contributed to Mrs L's confusion about the status of her policy.

- It is clear, Mrs L has received conflicting information from Aviva, about the charges that apply and the contribution history. It is also apparent that Aviva has not been able to provide the level of detail Mr and Mrs L require.

- The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 [SI 2013/2734] **(the Disclosure Regulations**) set out, at part four and in schedule three, the information to be provided to pension members on request. Relevant parts of the Disclosure Regulations are provided in the Appendix.

- Although understandably frustrating, the fact is that Aviva cannot provide the same level of detail as it had historically been able to. This was because much of the historic data was lost during the migration to the new IT system in March 2010.

- But, in any event, the Disclosure Regulations do not require Aviva to provide the level of detail requested by Mrs L. As there is no legislative or regulatory requirement that Aviva hold the level of data Mrs L has requested, the Adjudicator could not conclude that Aviva had made any error in this respect.

- Aviva has taken reasonable steps to try and reassure Mrs L that her contribution history is complete and correct. The reconciliation Aviva has carried out largely confirmed that contributions have been correctly applied, with units being priced as at the date of receipt of the contribution. Where Aviva has identified errors, it has made an adjustment by adding more units to compensate for any loss. The Adjudicator was satisfied that Aviva's action in this respect was reasonable and provided fair redress for any errors it identified.

- Mrs L was repeatedly assured that fund pricing information was published on Aviva's website, and she spent much time searching for this. However, the reality was that she had been misinformed, meaning the time spent was wasted. This is likely to have caused Mrs L further distress and inconvenience.

- When Mr L tried to raise a complaint by telephone, on Mrs L's behalf, he was informed that only written complaints would be accepted. This was confirmed to Mrs L, by Aviva in writing. However, restricting Mr L's ability to make a complaint on behalf of Mrs L, other than in writing, is contrary to the Financial Conduct

Authority (**FCA**) Dispute Resolution (**DISP**) handbook. This error will also have resulted in Mrs L suffering some distress and inconvenience.

- There was also some confusion over the correct process to follow to escalate the complaint, following Aviva's final response. Mr L has said that he was referred variously to TPR, TPAS and the Financial Ombudsman Service (**FOS**).

- The Adjudicator explained that both FOS and the Pensions Ombudsman have the power to investigate complaints about pension arrangements. FOS primarily deals with complaints about the advice, sale and marketing of personal pensions. Whereas this Office investigates complaints about the administration of personal and occupational pensions.

- Although Mrs L's complaint is better dealt with by this Office, under the DISP rules, Aviva was obliged to provide Mrs L with referral rights to FOS. But there was no similar requirement that Aviva also provide referral rights to this Office. On submitting a complaint to FOS, FOS identified that the dispute would be better dealt with by this Office, and so the matter was directed to TPAS which, historically, helped applicants resolve disputes prior to this Office becoming involved. Although this sequence of events has caused confusion, when responding to the complaint, Aviva complied with its responsibilities under DISP. Thus, there has not been any administrative error in this particular regard.

- Mrs L has requested compensation for the time she has spent dealing with her dispute, as well as for the worry and distress that it has caused her. Mrs L suggested that an award in excess of £3,000 would be warranted.

- The Adjudicator explained my usual approach to awards for non-financial injustice. He agreed that the £250 already offered by Aviva was inadequate but considered Mrs L's request for an award greater than £3,000 to be excessive. The Adjudicator recommended that Aviva pay Mrs L a further £500 in recognition of significant distress and inconvenience caused by the cumulative effect of the problems she had experienced with Aviva, and the protracted period of time.

27. Mrs L did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr L, acting on behalf of Mrs L, provided further comments, summarised below: -

- The Adjudicator made no comment on the implications of Mrs L not taking up the offer of a free switch to a stakeholder pension, having relied, instead, on the information contained within the letter of 31 December 2001, which assured her that she would be no worse off by not switching. In addition, the Adjudicator made a number of assumptions which are incorrect. For example, contrary to what the Adjudicator has inferred, Mrs L did not ever think that the information supplied by Aviva was 'in order'. Rather, her, "continuing experience was that nearly every piece of information or revised statement was shown to be inconsistent and/or incorrect."

- Aviva's letter of 31 December 2001 included the clear and unambiguous statement that, "charges and terms remain the same if you wish to deal directly with Norwich Union [now Aviva] or via your financial adviser." However, this is not accurate as the annual charges for a stakeholder plan, without a financial adviser, are reduced to 0.6%. On this basis, Mrs L has suffered a loss.

- Aviva claimed, on several occasions, to be unable to provide a copy of actual post sale documents, and even resorted to asking Mrs L to provide her own copy, yet the original documents have now been located. This is, "yet another reason why [Mrs L has] been justified in questioning the information provided by Aviva." Further, it is, "yet another example of Aviva saying that it cannot or will not produce information and after being challenged eventually concedes that it has had the information all along."

- The generic terms and conditions provided by Aviva do not add anything to the complaint, since they do not confirm how premiums are invested or detail the charging structure of the GPP in particular. The literature which is specific to the GPP, which Aviva denied existed, does not appear to have been considered by the Adjudicator.

- There are inconsistencies in the spreadsheet provided by Aviva following the audit in 2017, which have not been properly answered. Further, the audit was not an, "independent audit" which was "effectively away from the teams concerned" as Mr and Mrs L had been promised. Nor is there evidence of the involvement of a qualified actuary.

- Mrs L has never maintained that contributions should be invested on the due dates, but Aviva has been inconsistent on when contributions are invested. It is accepted that any financial loss as a result of the late payment is the responsibility of the Employer and Mrs L has, "never complained that any loss is Aviva's fault."

- Despite saying that it is not within this Office's remit, the Adjudicator has commented on the accuracy of the, "actuarial reconciliation." However, Mrs L cannot accept that this is accurate, "mainly because the Stakeholder adjustments should be based on a maximum 0.6% annual charge." Further, the spreadsheet conflicts with the 2017 annual statement and it has since come to light that, "there was a sum held in some sort of suspense account."

- The award, in recognition of the distress and inconvenience caused, is inadequate and should be higher.

28. The comments Mr L has made, on behalf of his wife, do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mr L for completeness.

Ombudsman's decision

29. I turn first to the issue of whether Mrs L was prevented from switching to a stakeholder pension with a lower charging rate. For the reasons set out below, I do not find that she was.

30. Aviva has provided more detail about how the charges for the stakeholder plan operate as follows. When the stakeholder plan was introduced, the annual charge ranged between 0.6% and 1% with a separate fund-based commission of up to 0.4%. This variation was because there was a commission sacrifice arrangement whereby the financial adviser attached to the plan could agree to reduce their initial commission and therefore the annual charge in return for a separate advice fee, paid outside of the pension. Alternatively, the adviser could be remunerated with a mix of initial and fund-based commission.

31. The only way in which it would be possible to have an annual charge of 0.6% would be for a stakeholder plan to be set up by an adviser who would be willing to forego all of their commission and then provide a separate invoice for their advice fee. In other words, an annual charge of 0.6% could only be obtained by the adviser agreeing to be remunerated with an advice fee, outside of the pension arrangement, in lieu of their commission, with the commission then being rebated back to the plan so as to reduce the annual charge. It would not be possible for Mrs L to approach Aviva directly, without a financial adviser, and establish a stakeholder plan which benefited from the 0.6% charge since, in this scenario, there would be no adviser commission to be sacrificed in order to benefit from the reduced fee.

32. At the time the stakeholder plan was introduced, commission and fee arrangements of this nature were commonplace, with providers having separate marketing budgets from which adviser commission would be paid. I accept the explanation above about why it was not in fact possible to switch into a product with a 0.6% charge.

33. I turn now to the record keeping concerns. It is clear that Mr and Mrs L have serious doubts about the accuracy of the data Aviva holds. In view of the inconsistent information Aviva has provided; the limited amount of historic transactional data which is available; and, the fact that Aviva could not, initially, locate post-sale documents but later produced some, I understand these misgivings. Although the Disclosure Regulations do not require Aviva to provide the level and detail of historic information Mrs L has requested, if funds are allocated as at the date of actual payment by employers (rather than on their due dates) it is necessary to hold the transaction data which Mrs L was seeking in order to maintain an adequate level of internal control over members' funds. Failure to keep a record of any discrepancy between paid and due dates would be maladministration. On balance I am persuaded that Aviva did hold such records because in 2017 it was able to reconstruct and produce a record of the discrepancies between due date and received date in so far as they affected unit allocation practice.

34. That said, there clearly have been administrative failings in the way that the payment reconciliation and notification process was working up to that point. Aviva accepts that it has provided inconsistent and inaccurate information to Mrs L which does amount to an administrative error.

35. Mr L has argued that the 2017 calculation was not independent and did not involve a qualified actuary. However, I cannot see that Aviva held itself out as offering to provide an independent calculation. The 2017 audit of the account clearly did involve Aviva's internal actuarial department, which was a reasonable approach. I can see no evidence of maladministration in the way that Aviva approached the task. I am satisfied that it has now done what is necessary to clarify the data which it holds and for Mr L to take up any outstanding issues of loss flowing from late payment of contributions with Mrs L's employer.

36. My Office does not provide an actuarial service and does not ordinarily check pension administrator's calculations; therefore, it is not appropriate for me to take further action in this regard.

37. Mr L has recently raised the point that the reconciliation spreadsheet conflicts with her 2017 annual statement. She says when she queried the discrepancy she was given incorrect information about how many units she held and it now transpires, "there was a sum held in some sort of suspense account." The complaint about the accuracy of the 2017 statement is a new issue which has not previously been raised and has not been investigated. I therefore make no finding about it here.

38. I agree that Aviva has made administrative errors: it has provided inaccurate and unclear information; it mistakenly assured Mrs L that fund pricing information could be found online; it failed properly to alert both TPR and Mrs L of the late payment of contributions; it presented barriers which prevented Mr L from raising a complaint on Mrs L's behalf; and, it incorrectly advised Mrs L that her pension was 'paid-up' when in fact Aviva was still accepting late paid contributions.

39. Where I find that there have been administrative errors, and there have been several in this case, I can make a direction that any injustice, whether financial or non-financial, be remedied. In this case, Mrs L has not demonstrated financial injustice directly flowing from Aviva's errors. Therefore, the matter remaining for me to decide is how to redress the non-financial injustice Mrs L has suffered.

40. I find that the cumulative effect of Aviva's various errors, and the extended period of time over which they were made, is likely to have caused Mrs L significant distress and inconvenience. She reasonably needed accurate and timely late payment notifications in order to pursue remedies including any outstanding losses against her employer. She actively tried to pursue her rights in the way the system envisages and I understand her frustration that she was unable to do so. Therefore, I uphold Mrs L's complaint.

Directions

41. Within 21 days of the date of this Determination, Aviva shall pay Mrs L £500 for the significant distress and inconvenience she has suffered. This award is in line with the scale of awards I usually make in cases where the distress and inconvenience is significant.

42. If it has not already done so, Aviva shall also pay Mrs L the £250 which it offered in its letter of 24 February 2015.

Karen Johnston

Deputy Pensions Ombudsman
18 September 2018

Appendix

The Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013 [SI 2013/2734]

Part 4.

13 – Other information to be given on request

(1) The information listed in Part 3 of Schedule 3 must be given to a relevant person in accordance with this regulation where the relevant person makes a request for the information.

(2) The information must be given within two months of the date the request is made.

(3) The information must be given in accordance with regulation 29.

Schedule 3.

Part 3 – Information on funding principles and actuarial valuations etc.

8. The latest statement of funding principles where required under section 223 of the 2004 Act (statement of funding principles).

9. Where Part 3 of the 2004 Act applies to the scheme, a copy of the last actuarial valuation referred to in section 224 of the 2004 Act (actuarial valuations and reports) that the trustees or managers of the scheme have received.

10. Where Part 3 of the 2004 Act applies to the scheme, the latest actuarial report referred to in section 224 of the 2004 Act that the trustees or managers of the scheme have received after the last actuarial valuation.

11. Any recovery plan prepared under section 226 of the 2004 Act (recovery plan) that is currently in force.

12. The latest payment schedule under section 87 of the 1995 Act (schedules of payments to money purchase schemes) or the latest schedule of contributions under section 227 of the 2004 Act that relates to the employer of the member.

13. The latest statement of principles governing decisions about investments where required by section 35 of the 1995 Act (investment principles).

14. A summary of the winding up procedure under section 231A of the 2004 Act (requirements for winding up procedure).