

## Ombudsman's Determination

Applicant	Mr R
Scheme	H C Baines Limited Retirement Benefit Scheme ( <b>the Scheme</b> ).
Respondent	Aviva

## Outcome

1. I do not uphold Mr R's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mr R is unhappy with the way in which Aviva handled his request for a retirement pack. In particular, Mr R says there were numerous delays and communication errors, and he subsequently suffered a relapse in his mental health conditions.

## Background information, including submissions from the parties

4. Mr R suffers from anxiety and depression. In August 2013, as a result of his conditions, he attempted suicide and was subsequently hospitalised for a number of weeks.
5. Following his hospitalisation, Mr R began to slowly recover, and his mental health improved significantly over the next four years.
6. On 17 October 2017, Mr R received a letter from Aviva saying that the Scheme was being wound up and it required information from him in order to provide details of his benefits.
7. On 20 October 2017, Mr R completed the member details form and returned it to Aviva.
8. On 1 November 2017, Aviva acknowledged receipt of Mr R's form and said that it would send him further information in due course. On the same day, Mr R emailed for an update.
9. On 7 November 2017, Aviva responded to Mr R's email and advised that he should be in receipt of its letter. It added that it would write again shortly.

10. On 8 November 2017, Aviva wrote to Mr R again, saying the benefits under the Scheme had now been assigned to him as he was the only remaining member. On the same day, Mr R requested that details of his benefits be sent in a retirement pack.
11. On 21 November 2017, Mr R chased the retirement pack from Aviva.
12. On 4 December 2017, Mr R chased the retirement pack again. The evidence indicates he telephoned Aviva and was told the pack would be sent soon.
13. On 11 December 2017, the evidence indicates Mr R was sent a retirement pack. However, it seems this was not received.
14. On 19 December 2017, Mr R chased his retirement pack. Aviva confirmed that it had already been posted, but said it would email a copy.
15. On 8 January 2018, Mr R telephoned Aviva, saying he could not open the email with his retirement pack. Aviva said it would reissue the pack by post.
16. On 12 and 16 January 2018, Mr R telephoned Aviva to say the pack had still not been received. Aviva said it was due to be reissued on 19 January 2018.
17. On 6 February 2018, Mr R raised a complaint about the delays he had experienced, highlighting that the situation was affecting his mental health. Aviva acknowledged his complaint and said it was being reviewed the next day.
18. On 13 February 2018, Mr R received the retirement pack. He received Aviva's response to his complaint two days later. Aviva initially offered Mr R £100 compensation for distress and inconvenience caused. When Mr R said he was not happy with this, Aviva increased its offer to £500, but has said it will not increase it any further.
19. Mr R brought the complaint to this Office, highlighting that Aviva had not considered the full impact of its actions. He said that, as a result of Aviva's consistent delays and broken promises, he has suffered a severe relapse in his mental health recovery. He has described the consequences of this and believes Aviva should consider the extent of the damage it has caused him. He argues that Aviva should then offer him compensation based how he has been affected, which would mean that it ought to be considerably higher.

## **Adjudicator's Opinion**

20. Mr R'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 evidence indicates that Aviva had delayed in providing a retirement pack to Mr R at several points, and had informed him one would be reissued but then failed to do so, as promised.

- The Adjudicator was persuaded that Aviva's actions might reasonably cause distress and inconvenience, but that this was not the damage Mr R was complaining about. In particular, she considered that the damage Mr R wanted Aviva to assess was the relapse in his recovery from anxiety and depression and how this had affected him.
- The Adjudicator sympathised with the mental health relapse Mr R had suffered, but did not believe it was a reasonably foreseeable consequence of Aviva's actions. In particular, the Adjudicator noted that Mr R did not need a retirement pack urgently and he had not informed Aviva of his mental health condition. As such, she did not consider it reasonable to hold Aviva responsible for the damage caused, and so she did not expect Aviva to have investigated the extent of the damage.

21. Mr R agreed that the damage in question was his relapse in recovery from depression and anxiety. However, he did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr R's provided further comments, highlighting that:

- He made about 20 calls to Aviva, and not all of these have been referred to by the Adjudicator.
- His complaint should succeed on the eggshell (or thin-skull) rule. In particular, he argues that Aviva's actions had a greater impact on him due to his mental health conditions. He says that Aviva should consider the impact its actions had on him, regardless of whether the damage was reasonably foreseeable.
- He is being discriminated against as his injury is a mental health one. He highlights that there is legislation which disallows such discrimination.

22. Mr R's comments 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 R for completeness.

### **Ombudsman's decision**

23. Firstly, I would like to express my sympathy to Mr R in respect of his condition and that he has had a relapse in his recovery. It is unfortunate if this relapse was triggered by Aviva's actions, but I must consider whether Aviva ought to be responsible for what Mr R has suffered.
24. The eggshell rule is a well-established common law doctrine that states a perpetrator "takes his victim as he finds him". In other words, Aviva cannot defend a claim from Mr R about the extent of the damage he has suffered, by arguing that he is more likely to suffer a mental health injury because of his natural disposition. If Aviva is responsible for Mr R's injury, that is, the relapse in his mental health recovery, then it

is also responsible for the extent of that damage, regardless of whether the extent of the damage is worse for Mr R than it would be for someone else.

25. However, in order for Aviva to be responsible for damage caused, the damage in question must have been reasonably foreseeable. I do not agree that the eggshell rule can be applied without reasonable foreseeability first being satisfied.
26. I am not persuaded that Aviva could reasonably have foreseen that its actions would cause a relapse in recovery from anxiety or depression. It is clear that Mr R experienced trouble with obtaining a retirement pack between 8 November 2017 and 13 February 2018. However, Aviva did post a copy of the pack on 11 December 2017, and emailed another copy on 19 December 2017. In between this latter date and 8 January 2018, it was not aware that Mr R had still not received a pack.
27. In addition, Mr R has not evidenced that he informed Aviva he needed a retirement pack urgently, and I cannot see that Aviva were aware of his mental health condition until he raised a complaint. Following this, Aviva offered him £500.
28. I acknowledge that there were a number of times that Mr R had requested the retirement pack, and that Aviva promised to reissue it but failed to do so on occasion. However, whilst I agree this would cause frustration and inconvenience, I am not persuaded that it would have been reasonably foreseeable that Mr R would suffer a relapse in his mental health condition. I am satisfied that Aviva has acted reasonably by not investigating further the impact of this relapse.
29. I am also satisfied that Aviva has not discriminated against Mr R. I have not considered whether Aviva's process for investigating mental health injury is the same as its process for investigating a physical injury, as I do not find that Aviva is responsible for a deterioration in Mr R's mental condition.
30. Therefore, I do not uphold Mr R's complaint. Mr R should contact Aviva should he wish to accept its offer of £500.

**Anthony Arter**

Pensions Ombudsman  
26 September 2018