

## Ombudsman's Determination

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| Applicant  | Mr L  |
| Scheme     | RMJM & Partners Retirement Benefits and Life Insurance Scheme ( <b>the Scheme</b> ) |
| Respondent | Aviva Life and Pensions UK Limited ( <b>Aviva</b> )                                 |

## Outcome

1. Mr L's complaint is upheld and to put matters right, Aviva shall pay Mr L £1,000 in addition to the £400 which Aviva says that it has paid Mr L for the severe distress and inconvenience he has been caused. Aviva shall also provide Mr L with a correct Retirement Benefits Schedule.

## Complaint summary

2. Mr L has complained that Aviva delayed paying his pension from the Scheme from July 2017 until April 2019. He considers that he has not been adequately compensated for the delay.

## Background information, including submissions from the parties

3. Mr L was a deferred member of the Scheme and held pension benefits with Aviva. He was due to receive his pension from his 65<sup>th</sup> birthday in July 2017.
4. RMJM & Partners (**the Employer**) provided a number of different pension arrangements for its employees.
5. In 2012, the Employer went into receivership and Dalriada Trustees Limited became the Trustee (**the Trustee**) of its pension schemes.
6. Aviva, the Scheme's administrator, was not updated about the change in Trustee following the receivership and continued to communicate with Mr T, the previous Trustee (**the previous Trustee**) regarding the Scheme.

7. In January 2017, Mr L contacted Aviva to enquire about his pension. Aviva advised him that it held no records of his pension and that it would not communicate directly with him. Mr L was provided with the contact details of the previous Trustee.
8. In early 2017, Mr L contacted the previous Trustee.
9. On 2 April 2017, the previous Trustee wrote to Aviva and requested that it send Mr L a retirement pack.
10. In August 2017, Aviva issued the retirement pack to Mr L and the previous Trustee. This stated that Mr L's estimated retirement fund value was £119,279.
11. On 23 August 2017, Mr L and the previous Trustee completed and returned the necessary documentation from the retirement pack to Aviva, to allow Mr L to take his pension benefits.
12. In October 2017, Aviva advised the previous Trustee that there was no Deed of Appointment (**D of A**), and this meant that Aviva could not put Mr L's pension into payment.
13. The previous Trustee subsequently complained to Aviva about the delay in paying Mr L's pension and pointed out that Aviva had accepted its instructions before.
14. On 18 October 2017, Aviva replied to the complaint and said:-
  - There had been an error and it could not now accept the previous Trustee's instructions to pay Mr L his pension.
  - Mr L would not lose out as a result of Aviva's mistake and his pension would be backdated.
  - The delay had occurred because of a change in the Scheme's address and due to issues with the D of A.
  - A £150 payment would be sent to Mr L in recognition of the distress and inconvenience caused to him.
15. On 23 October 2017, Aviva sent Mr L a £150 for the distress and inconvenience caused.
16. Throughout 2018, there was an ongoing exchange of correspondence between the previous Trustee and Aviva. During this period, Aviva confirmed that it would not put Mr L's pension into payment until the issue with the D of A had been resolved. It explained that a previous D of A from October 1995 referred to RMJM Scotland Ltd being named the sole trustee, despite it going into receivership on 25 October 2012.
17. In December 2018, Aviva confirmed to the previous Trustee that it now had a copy of the D of A it required which provided all the outstanding information and brought the Scheme's administration details up to date. Aviva confirmed it would now be able to liaise with the Trustee.

18. The previous Trustee wrote to Mr L and confirmed that Aviva was now dealing with the Trustee regarding his pension.
19. Aviva subsequently issued a new retirement illustration for Mr L to the Trustee, based on Mr L's pension starting in 2018.
20. In December 2018, the Trustee replied to Aviva and said:-
  - The new retirement illustration for Mr L was incorrect as it was based on the "current" date.
  - Mr L had already completed the paperwork required to put his pension into payment in 2017, and he had already requested to retire from July 2017.
  - Aviva had previously confirmed that Mr L would not be disadvantaged by its ongoing delay in paying his pension.
21. In January 2019, Aviva issued revised illustrations to Mr L and the Trustee and offered a further £250 to Mr L for the delay in paying his pension. Aviva also explained that there were two parts to his pension; new application forms would be needed for both parts to allow the pension to be put into payment.
22. On 13 January 2019, Mr L wrote to the Trustee and confirmed that he did not wish to take his pension as of "now" but wanted it backdated to July 2017, with financial interest added. Mr L said he had already completed the relevant paperwork in 2017 and he did not believe he should have to complete further paperwork. He also did not consider that the offer of a "few hundred pounds" for the delays and stress caused was sufficient.
23. In February 2019, the Trustee instructed Aviva to put the pension into payment, backdated to 2017. The Trustee told Aviva that it also expected payment to include interest and an award for the late payment of Mr L's pension.
24. On 27 February 2019, Aviva wrote to the Trustee and apologised for requesting a full application to be completed for both parts of the pension. It said Mr L could take both parts of the pension separately if he wished to.
25. On 4 March 2019, the Trustee emailed Aviva and said:

"The Trustees are satisfied that the member wishes to proceed in line with the options on the previously filled in form. If you would like an email from the member confirming this, please let us know and we will arrange as a matter of urgency."
26. On 7 March 2019, the Trustee telephoned Aviva for an update and was told a new signed declaration was required from Mr L to put his pension into payment.
27. On 10 March 2019, the Trustee emailed Aviva to complain that a new signed declaration had been requested from Mr L, after it had previously agreed that this was not required. The Trustee did not believe this was necessary as Mr L had already

signed a declaration in August 2017 and Aviva had agreed that it had all that was required to put Mr L's pension into payment.

28. On 13 March 2019, the Trustee chased Aviva for the payment of Mr L's pension.
29. On the same day Aviva replied to the Trustee confirming that the payment would be made as a priority to Mr L.
30. On 29 March 2019, Aviva confirmed to the Trustee that the gross pension, for March and April 2019, would be paid within ten working days of 6 April 2019.
31. On the same day, the Trustee replied to Aviva and asked for a full response regarding the backdated payments due, as well as the interest and compensation that would be paid to Mr L.
32. On 18 April 2019, Aviva confirmed to the Trustee that:-
  - A pension had been paid for February and March 2019.
  - The regular pension payment due on 17 April 2019 was made on time.
  - Mr L's correct monthly pension was £1,107.81 gross, less tax of £221.40, leaving a net payment of £886.41.
33. Mr L confirmed to the Trustee that he had received pension payments, but these did not correspond to the amounts due or to the pension he accepted in 2017. Mr L also said that as the matter had "stretched into years", he was in "despair" at ever getting the matter resolved.
34. On 24 April 2019, the Trustee emailed Aviva and said that the amounts confirmed for Mr L's pension did not relate to the full amount he expected as they differed from those he accepted in August 2017.
35. On 2 May 2019, Aviva made a further payment of £14,835 to Mr L.
36. On 11 May 2019, Mr L wrote to the Trustee to confirm that a payment had been received but said he did not have anything to explain how the sum was calculated or what it represented. He said that he remained unsure of whether he had received his correct entitlement.
37. On 13 May 2019, Mr L provided the Trustee with a list of payments that he had received from Aviva in relation to his two pension plans. He said that the payments might have meant the pension owed to him had now been paid but he wanted an explanation of how the payments were arrived at. He also said:

"I personally do not regard a few hundred pounds as sufficient for what they have put me through over the past years. It started with my approach to Aviva in January 2017, when they denied knowledge of my pension fund. That was resolved, but then followed by years of uncertainty, frustration and stress as further problems were raised, before eventually being overcome with your

assistance. All of this was made worse by their ignoring me. It is not so much that problems were encountered, but the manner in which they were dealt with I find intolerable.”

38. In June 2019, the Trustee had a conference call with Aviva. It was unable to reconcile the pension payments Mr L had received and confirmed it would review the file and respond accordingly.
39. On 18 July 2019, Mr L updated the Trustee saying that he received two pension payments for July, and he was still awaiting the reconciliation of the payments.
40. On the same day, the Trustee confirmed to Mr L that it had not received a reply to its requests for information from Aviva.
41. Mr L did not receive any explanation or reconciliation information from Aviva, so he brought his complaint to my Office.
42. As part of the Adjudicator's investigation, Aviva was asked for a reconciliation exercise to be conducted to enable Mr L to check that he had received the correct pension payments and had been put back into the position he would have been in had the delay not occurred.
43. In December 2020, Aviva provided the Adjudicator with details of the pension payments that had been made. This was shared with Mr L. He said that now he had the reconciliation figures, he no longer disputed the pension amounts he was paid. He considered that this part of his complaint was resolved.
44. Mr L's position is:-
  - He does not agree that Aviva has paid him £671 in compensation. He received an interest payment of £271. A further offer of compensation was made in January 2019, which he rejected, and he has no record of a further payment being made.
  - He does not consider that the offer of £400 for distress and inconvenience was adequate. Additional compensation is due for Aviva's actions which include:-
    - Failure to respond to requests and repeated errors made over a prolonged period.
    - Slow to put matters right.
    - Missed opportunities to notice and remedy mistakes.
    - Aviva persisting in issuing incorrect, unchecked information.
    - A delay of over two years in paying his pension. During this time, he suffered many periods of disturbed sleep, anxiety, and anger. He had many low points and spent too much time re-checking documents.

## **Adjudicator's Opinion**

45. Mr L's complaint was considered by one of our Adjudicators who concluded that further action was required by Aviva. The Adjudicator's findings are summarised below:-

- The Adjudicator considered that Aviva's actions in delaying the payment of Mr L's pension amounted to maladministration.
- Aviva had acted correctly by paying the pension due to Mr L, including interest for late payment.
- The delays in paying the pension and providing the reconciliation information caused Mr L serious distress and inconvenience which had not been adequately recognised by Aviva.
- It took Aviva from early 2017 until the end of 2018 to establish the correct Trustee before it could release Mr L's pension. Once this issue was resolved, Mr L had to wait another four months, from December 2018 until March 2019, before he received his first pension payment.
- Aviva did not provide Mr L or the Trustee with clear information regarding the payments, to allow Mr L to check the pension figures he had received. It was only after The Pensions Ombudsman Office's involvement that reconciliation information was provided. This part of the complaint was then resolved.
- Aviva should pay Mr L £1,000 in total for the serious distress and inconvenience he was caused.

46. Aviva replied late and did not agree that the amount offered for distress and inconvenience should be increased. It said it had apologised for its errors in its complaint responses. It added that it had asked its servicing team to issue the requested information to Mr L as a priority.

47. Mr L said he accepted the Adjudicator's Opinion. He pointed out that he was still waiting for a Retirement Benefits Schedule, which would show what pension benefits Aviva considered were due under the Scheme. Finally, he still wanted an apology for the "chaotic way" in which Aviva handled the matter.

48. I agree with the Adjudicator's Opinion except the level of compensation for the distress and inconvenience caused to Mr L. I note the additional points raised by Aviva and Mr L.

## **Ombudsman's decision**

49. There is no dispute that Aviva considerably delayed the payment of Mr L's pension. However, I note that Aviva has correctly backdated the pension payments due to Mr L to his 65<sup>th</sup> birthday and paid interest for the late payment.

50. The remaining issue to be determined is whether the current offer of redress made by Aviva is sufficient. Mr L has argued that the offer of £400 for the distress and inconvenience this matter caused him is insufficient due to the two-year delay in receiving his pension, the numerous ongoing errors, the lack of responses, and the time taken to resolve this issue. He is seeking an apology for the “chaotic” way in which matters were dealt with by Aviva and would like a Retirement Benefits Schedule.
51. It is clear there were lengthy and avoidable delays in Aviva paying Mr L’s pension. Further, it compounded this situation in a number of ways throughout this matter and failed to provide Mr L with clear information regarding the payment of his pension.
52. Once payment was made, Aviva did not provide Mr L or the Trustee with information which would have allowed him to check whether the pension figures he had received were correct and in accordance with what he agreed to in 2017. Mr L has explained that this lack of clarity caused him disturbed sleep and anxiety. He is also still waiting for a corrected Retirement Benefits Schedule showing the pension he was due from the Scheme. Aviva should have provided greater clarity and sooner, to allow the matter to be resolved far earlier. I find that Aviva’s actions amount to maladministration.
53. Mr L has not suffered a financial loss as he has been paid the pension due to him with interest, but I am satisfied that Mr L was caused severe distress and inconvenience by Aviva’s maladministration and lack of an apology. Given the length of time which Aviva took to resolve this issue during which time Mr L received no pension, has undoubtedly caused Mr L severe distress and inconvenience and the award which I direct should reflect this.
54. I uphold Mr L’s complaint.

## **Directions**

55. Within 28 days of the date of this Determination, Aviva shall:
  - pay £1,400, in total, to Mr L in recognition of the severe distress and inconvenience he has experienced, along with a written apology. This award is an additional £1,000 to the sum Aviva says it has already paid Mr L for distress and inconvenience;
  - provide evidence to Mr L that it has already paid him £400, as Mr L disputes its receipt; and

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- provide a correct Retirement Benefits Schedule.

**Anthony Arter**

Pensions Ombudsman

7 April 2021