

The complaint

Mr O is unhappy that Aviva Life & Pensions UK Ltd stopped taking direct debit (DD) payments towards his pension policy when he reached his chosen retirement date, his 65th birthday, without notifying him in advance they were going to do this.

What happened

Mr O took out a personal pension with Aviva in 1996. In September 2021, on reaching his NRD, Aviva stopped collecting the DD payments towards the policy. Mr O only realised this had happened in August 2022, when Aviva sent him a letter detailing the value of his plan and his retirement options. Unhappy his payments had been stopped for the previous 12 months, without his knowledge, Mr O complained to Aviva.

Aviva responded to Mr O's complaint, explaining Mr O's original policy schedule stated that contributions will be paid up until August 2021 – the month before his chosen retirement date (NRD), and no further payments could've been collected without his express permission. But they also acknowledged their systems didn't provide an automatic reminder to a customer that their payments were about to cease – and said they'd raise that point internally.

Mr O didn't think Aviva had properly responded to all of his concerns, prompting them to reconsider his complaint, and issue a further response in December 2022. In this, in addition to summarising the communications they'd had with Mr O, Aviva also commented on Mr O's DD, and their obligations under the DD guarantee. The letter also explained the DD guarantee states money can't be collected from a consumer without their authority, and in this case, that authority only existed until the pre-determined date (the NRD stated in his policy), so they couldn't continue taking payments after that date.

Aviva still believed they'd done nothing wrong regarding the DD issue, but sent Mr O a cheque for £100 as compensation for not addressing his complaints fully in their first complaint response letter. Mr O remained unhappy with Aviva's response, and the fact they'd cancelled his DD and taken no steps to proactively advise him they were doing this, or alert him to the options for continuing making payments into his plan should he have wished. So, he brought his complaint to our Service.

However, one of our Investigators didn't think Aviva had done anything wrong here. She thought Aviva had been clear that Mr O's payments would cease when he reached his 65th birthday – referring to the wording contained in the original policy, and letters Aviva appeared to have sent to Mr O in the months before he reached his NRD.

Mr O was unhappy with our Investigator's conclusions and made further representations to her. He felt she hadn't relied on all of the key evidence, and she'd placed too much reliance on a document Mr O had no recollection of receiving. He commented extensively on where he felt Aviva's responsibilities lay and still thought Aviva should have taken more proactive steps to alert him that his DD payments would stop.

As agreement couldn't be reached, Mr O's complaint has been passed to me to consider and issue a Decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

To begin with, I must make clear to Mr O that we are an informal dispute resolution service, set up as a free alternative to the courts. Mr O has provided significant commentary and documentation to us, and I can assure him I've read and fully considered everything he's said. And I'm very sorry to hear of his recent health problems too. But in deciding this complaint I've focussed on what I consider to be the heart of the matter, rather than commenting on every issue in turn. This isn't intended as a discourtesy to Mr O. Rather it reflects the informal nature of our service, its remit and my role in it.

Policy inception, and subsequent premium increase documentation

I want to start by looking at the documents Aviva sent to Mr O when he took out the policy, and in the subsequent years when he increased his premiums. When Mr O started paying into the policy, Aviva sent him a policy schedule, which confirmed his NRD (21 September 2021), and the contributions he'd pay, stated as being:

“£40.00 payable monthly from 1 April 1996 to 1 August 2021 inclusive”

In March 1998, Aviva sent a statement to Mr O after he'd opted to increase his premiums, confirming the increased amount would be payable from that date until 1 August 2021. And in May 2006, following another change in premium, Aviva wrote to Mr O to confirm (amongst other things) the remaining plan term was 15 years and 5 months (taking him to September 2021), and that payments will continue up until this date.

I think it's sufficiently clear from all of these documents that Mr O's premiums would be paid until he reached his NRD. And I think it's reasonable to conclude Mr O would, or at least should, have been aware that his policy premiums would end on that date.

Aviva's requirements to communicate with Mr O as he approached his NRD

But, as Mr O has stated, a person approaching pension age may not recall the precise mechanics of a pension plan he took out many years previously. This is a point the regulators have previously acknowledged, prompting The Association of British Insurers (ABI) to introduce the concept of the 'wake up' and 'follow up' letters that need to be sent to consumers ahead of their retirement. The requirements for what need to be included in these letters are set out in the Financial Conduct Authority's (FCA) handbook, specifically the Conduct of Business (COB) section 6.5.53R. I don't repeat these obligations here, but they can be found on the FCA's website.

This is important here because these set out Aviva's (and all provider's) obligations in terms of what they needed to tell Mr O as he approached his NRD. A 'wake-up' letter needed to be sent to Mr O at least four months before his selected retirement date.

In summary, its purpose was to prompt Mr O that his NRD is approaching, and to get confirmation whether he intended to retire then and to encourage him to consider his options. And having looked at Aviva's letter to Mr O dated 21 April 2021, I'm satisfied that it did this. But these COB rules I've referred to – which as I've said are what Aviva needed to

comply with - don't include an obligation to alert Mr O (or any customer) their DD payments will cease on any given date.

In July 2021, Aviva sent a further follow up letter to Mr O (as per COB 6.5.56R), referring to the above letter. It contained a questionnaire asking about potential retirement choices. It included, at page 15, information should Mr O choose to leave his funds with Aviva for the time being and make his pension choices at a later date. Amongst other things, it said:

"If you want to continue paying into your pension plan, you'll need to check the information you were given when you started your plan to see if you can do this. If your pension plan doesn't allow you to continue making payments, you may be able to start paying into a separate plan"

As before, there was no regulatory obligation for Aviva to specifically alert Mr O in this letter that his DD payments would shortly cease. But, nevertheless, I think the letter is reasonably clear in alerting him of a choice he had whether to *"continue paying"* into the policy – suggesting he needed to take some sort of action if that's what he wanted to happen.

In assessing this complaint, I need to be satisfied that Aviva has done what it was required, by its regulator, to do. And given what I've said above, I don't think Aviva did anything wrong by not specifically alerting Mr O in their letters that his DD payments would cease in the forthcoming months. There was no regulatory requirement for them to do that.

Mr O also believes Aviva were in breach of the 'DD guarantee' requirements, as they didn't give him ten working days' notice that the payments would cease. Echoing the point made by our Investigator, this ten-day notice is only required when there is a change to the DD amount, date or frequency. Here, the DD had reached the end of the period it was set up to cover, and so there was no requirement (under the DD guarantee) for Aviva to notify Mr O that payments were to cease, as intended when the policy was set up.

So, given what I've said above, I don't think Aviva did anything wrong in the way they communicated with Mr O regarding his DD ceasing.

Did Mr O actually receive the April 2021 letter

Mr O advises he never received this letter at the time, only receiving it 18 months later as part of his complaint exchanges with Aviva. He appears to suggest, during these exchanges, Aviva admitted they'd never sent it to him at the time, which had they done would likely have alerted him to the imminent DD cessation, allowing him to consider his further options.

Having looked at the exchanges Mr O had with Aviva after he'd raised his complaint, I don't agree with Mr O's interpretation of what Aviva have said. Instead, Aviva have admitted to omitting a copy of that letter in their post-complaint/data request exchanges with Mr O only.

Which brings me back to Mr O's point about never having received the letter in the first place. He takes issue with our Investigator's apparent assertion that it's up to him to prove that he didn't receive that letter. Mr O says it's impossible to prove a negative, and I agree. But I don't think that changes the outcome here in any case.

Where there's a dispute concerning whether a business has sent a document to a consumer as they should have done, we have to look at what we think is most likely to have happened, based on the evidence we have available. And we can only hold a business responsible for whether it sent a letter correctly, and not whether it was received.

Here, I've seen that all the copy letters Aviva sent to Mr O were correctly addressed. So, I'm satisfied it's more likely than not that Aviva sent the April 2021 letter correctly. That's not in

any way to suggest I'm questioning what Mr O told us about unfortunately not receiving the April 2021 letter, but that's not something I can fairly hold Aviva responsible for. And in any case, Mr O did receive the July 2021 letter which was essentially a reminder about the April 2021 letter, which also highlighted to Mr O that he needed to check if he could continue making payments into his plan after his NRD.

So I think, on balance, it's likely Aviva did send the letter, and so I can't hold them responsible for the fact Mr O didn't receive it.

Other matters Mr O has raised in exchanges with our Investigator.

Mr O has commented robustly on what he feels is, to generally paraphrase, an imbalance in the relationship between him and Aviva – he says they have resources and knowledge, whereas he is a layperson pensioner with limited knowledge of what can be a very complex area. He suggests this should place an obligation (again, I paraphrase) on Aviva to take greater effort in ensuring they communicate with him (and consumers generally) to ensure best outcomes on his behalf.

I do appreciate his concerns, as pensions can be a very complex and jargon/regulation heavy subject area – a point the FCA has recognised over time. All firms operating in the pension industry have an obligation to communicate with consumers in a way that's as easy to understand as possible. And looking at the letters Aviva have sent to Mr O over time, I think these letters meet those FCA requirements. And all of the letters sent to Mr O by Aviva that I've referred to invite him to contact them if he's unsure of their contents or importance.

I appreciate Mr O may disagree, but the general content of Aviva's letters to its customers isn't something I'm able to change or influence. This extends to the fact there's no obligation on Aviva (or any firm) to notify Mr O that his DD's would cease when a defined policy term comes to an end. If Mr O thinks this is something that Aviva (or any firm) should be required to tell their customers, he'd need to raise his concerns with Aviva's regulators, the FCA.

Finally, I want to acknowledge Mr O's continued unhappiness with Aviva regarding how they've responded to his requests for copy documents to be provided to him, including after he's brought his complaint to this Service. However, in relation to this complaint, I'm satisfied I've seen (as has Mr O) and taken account of all of the relevant documents relating to the DD cessation issue in reaching my Decision.

Conclusion

Having looked at all the evidence, from both parties, I'm satisfied Aviva's letters to Mr O met the requirements of their regulator and were reasonably clear, and they had no regulatory obligation to specifically advise Mr O his DD would cease when his policy reached his NRD. I do appreciate Mr O's strength of feeling about this matter, and that my Decision will likely come a disappointment to him. However, for the above reasons, I don't think Aviva have done anything wrong here, and so I won't be asking them to do anything further.

My final decision

I don't uphold Mr O's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 6 October 2023.

Mark Evans
Ombudsman

