

The complaint

Mr D complains about inaccurate information and delays by Aviva Life & Pensions UK Limited (Aviva) in setting up his pension annuities

What happened

Mr D said he had two pension policies due to pay out on his 60th birthday. They both had guaranteed annuity rates with 5% per annum annual increases. He contacted Aviva about a year before his birthday to check details. It took several calls to get the details confirmed. He called again two months before his 60th birthday to get confirmation he could start to take his pension on his birthday. They sent him incorrect figures and he had to call numerous times. He got final confirmation 5 months after his 60th birthday. Payments started with effect from September 2020. He wanted to collect the pension he would have had if it had started on his 60th birthday. He said the final response letter only quoted one not both policies.

Aviva accepted that in relation to policy 9606 it had provided incorrect and conflicting information over the past 2 years and apologised for the inconvenience and confusion caused. It issued a retirement quote on 6 August 2020 but said it quoted the wrong annuity rate. Mr D called on 14 August 2020 and it sent out the same quote on 20 August 2020. It revised the quote on 11 September 2020 with the correct rate. It said it would make sure he didn't lose out. It sent £200 by way of apology. It said the annuity actually paid was higher than it would have been had it been set up sooner. However it said he had lost 22 days of income and arranged to send him £841.46. It issued option packs on 29 March 2020 for his NRD but heard nothing until the IFA requested further information on 22 May 2020. It said there was no evidence Mr D would have taken his pension at age 60.

The investigator upheld the complaint. He said that it was clear that the information provided to Mr D was both unclear and incorrect. This was both before and after his NRD. There was evidence he was looking into his pension as early as August 2018 as he contacted his IFA and made contact with Aviva. There is further activity in 2019. Both Mr D and his IFA contacted Aviva again and question the information. He felt there was evidence Mr D would have taken his benefits at age 60 as he had been gathering information since 2018 and was even considering early retirement as the figures given were so high. There was also evidence Mr D and his IFA made significant efforts to clarify the Guaranteed Annuity Rate (GAR) before he reached age 60, and this continued for several months after his 60th birthday. The IFA could not advise Mr D without correct information. On balance he thought Mr D would have taken his benefits at age 60. He proposed an award for fair compensation and £600 for distress and inconvenience.

Aviva did not respond.

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.

Mr D has two policies one ending 9606 and the other 7406. I have seen the policy schedules which show

Policy 9606 started 12/07/1988 has a GAR of £100 per £1,150 at age 60 and 5% pa escalation

Policy 7406 started 04/07/1989 has a GAR of £100 per £1,830 at age 60 and 5% pa escalation

Mr D says he had no correspondence regarding either policy in the 10 years up to August 2018. He made several requests between 19/8/2018 and early September 2019 – all information was incomplete as they did not include escalation. This continued until they got it correct on 15 September 2020 but their proposed loss assessment was only done for one policy.

For ease of reference I have set out a timeline of events below based on the business file supplied. I have added some comments in bold italics.

Timeline

13 September 2019 policy 9606 telephone record of call from Mr D. He was told information was issued to his IFA on 5/8/2019. Mr D asked for a copy by email. Advised more up to date calculation requires manual calculation and cannot be given verbally.

22 January 2020 note of call to Aviva from the financial adviser asking details of age benefits can be taken for policies ending 7406 and 9606. Confirmed age 55 to 75.

29 March 2020 policy 9606 letter to Mr D confirming fund value £212,903.66

15 April 2020 policy 7406 letter to Mr D advising of consequence if he doesn't claim his policy before age 75.

15 April 2020 policy 7406 letter to Mr D with retirement options.

Fund value at 16 May 2020 is £116,079.39 and the transfer value is the same.

It notes there is a GAR but no details.

29 April 2020 policy 9606 telephone call record from IFA chasing requests as no breakdown of funds sent.

1 May 2020 Aviva wrote re policy 9606

- It confirmed a transfer value of the policy was £118,405.85 ***(NB compare to value of circa £200,000 in letter of 29/3/20 above)***.
- The policy was in a conventional with profits policy.
- If the benefits were not taken at normal retirement date they would be placed into a deposit fund and earn interest at 7% per annum. This was not guaranteed.

4 May 2020 letter from Aviva to Mr D policy 9606

Transfer value at 16 May 2020 is £197,197.65 (**NB see letter of 1/5/20 above and value of circa £118,000**)

Notes there is a GAR that only applied between age 60 and 75 (**no details of escalation in payment**)

Suggests GAR income of £17,147.62 **but no details of increases**

Letter says values quoted on 4 May (**Compare to comment about TV on 15 May**)

4 May 2020 letter from Aviva to Mr D policy ending 7406

Calculation date 24 April 2020

Projection of fund value on various growth rates at age 65

Notes there is a GAR but it only applied between age 60 and 75

Suggests income with GAR of £11,800 at age 65 – **no detail of escalation in payment**

8 May 2020 policy ending 7406 letter to Mr D answering questions as to why the fund value was higher than the transfer value.

22 May 2020 policy 9606 telephone call record from IFA requesting final pension date, annuity quote at age 60, 65 and transfer value. Advised would be done by 9 June.

2 June 2020 Aviva wrote re policy ending 9606.

- This confirmed the policy started on 1 July 1989 and vested on his 60th birthday but had been deferred until 16 May 2035 as he had decided not to take his benefits.
- The funds had been placed into a deposit fund earning interest at 7% per annum but this was not guaranteed.
- It said the policy carried a guarantee annuity rate (GAR) of £100 per £1,150 at age 60 for a single life non escalating (my emphasis) pension payable monthly in arrears guaranteed for 5 years. The transfer value was said to be £197,563.53

11 June 2020 policy 7406 letter to Mr D transfer value £108,057.72, notes there is a GAR but no detail, applied between 60 and 75, quotes a pension of £9,366.76 with GAR based on a value of £108,057.72 at age 60.

12 June 2020 policy ending 7406 letter to Mr D confirming policy matures/vests on his 60th birthday 2020 but has been deferred to 2035. Benefits have been placed in an interest-bearing account earning 7% not guaranteed. The Policy has a GAR of £100 per £1,000 (**NB this is incorrect**) of fund and 5% escalation on a single life annuity, there might be more than 25% tax free cash, the transfer value was £108,057.72.

25 June 2020 – file records show a call in from Mr D's financial adviser asking for current values and any bonuses. Advised would be done by 13 July 2020. It confirmed it had sent out an FPD on 12/06 but this had not been received. The adviser said he had received a VQ dated 20/06 but wanted options at retirement. Aviva said that was what the VQ was.

26 June 2020 policy ending 7406 letter from Aviva enclosing a policy projection to age 65 and shows a transfer value at 2 June 2020 of £108,057.72 not guaranteed. It notes there is a GAR but no details but says the pension at 65 would be £11,509.52 per annum – **no comment about any escalation**. It provides projection to age 65 based on various levels of investment growth.

30 June 2020 letter to Mr D re policy 7406

transfer value £108,529.5q at 26 June 2020.- not guaranteed.

Notes there is a GAR that applies to age 65 – *no details of the rate etc*

Estimated GAR income at age 75 £17,800 based on a value of £205,000

7 July 2020 policy 9606 telephone call records from Mr D- unhappy about conflicting values and financial adviser thinks the figures are wrong for both policies. Refers to values given on 8 August 2019 on policy 9606 with transfer value of £111,000, on 29/3/20 £212,000 then £197,000. On policy 746 15/4/20 transfer value £116,000. Requests new quotes for both plans urgently reminds Avia both plans have GARs.

11 July policy 9606 telephone call record from IFA saying figures on one policy seem to be from the other. Ask to reissue.

13 July 2020 retirement options for policy 7406

Policy value at 8 July 2020 was £108,781.22 and saying there was a guaranteed annuity rate *but no details of the rate included*.

14 July 2020 policy 9606 letter from Aviva to Mr D re retirement

Fund value £199,144.55 on 10 July 2020

Note that the policy has a GAR **but does not say what it is**

15 July 2020 Policy 9606 call from Mr D to request a valuation and told it needed manual calculation. Also notes say sent copy of valuation for policy 7406 by email.

4 August 2020 policy 9606 call from Mr D. Aviva confirmed it had received a VQ and a manual calculation was in progress. Mr D asked for it to be sent by post and email.

6 August 2020 policy 7406 retirement quote

Fund value on 8 July £108,781.22

Confirms a GAR for a pension from age 60 of £5944.32 increasing by 5% per year

12 August 2020 policy 9606 letter to Mr D pension anniversary certificate.

Transfer value at 28 May 2020 was £197,636.78

14 August 2020 policy 9606 telephone call record from Mr D complains GAR not correct have waited for new quote but still looks wrong.

19 August 202 policy 9606 call record from Mr D asking for confirmation of 5% annual increases.

20 August 2020 policy ending 9606 and 7406 call from Mr D complains quote of 20/8/20 does not include GAR and the 5% escalation,

21 August 2020 letter from Aviva re policy 7406 regarding retirement options for the policy. This said:-

- The retirement fund at 8 July 2020 had an estimated value of £108,781.22
- It said the entire fund was subject to guaranteed annuity rates for single life non escalation pension or a combination of guaranteed and current annuity rates.
- He was entitled to a GAR from age 60 paying an annual income of £9,459.24 but payments would not increase, or £7,094.40 non increasing, or £5,944.32 with 5% increases pa, or £4,458.24 with 5% increases depending on tax free cash.

26 August 2020 policy 9606 telephone call record from Mr D – still not received quote that was promised would be emailed on Monday.

27 August 2020 policy 9606 call record from Mr D asking confirmation of value of policy when quotes were calculated.

1 September 2020 policy 9606 call records from Mr D chasing information re GAR.

9 September 2020 policy 9606 call in from Mr D complaining trying to claim pension but keeps getting incorrect quotes. He is entitled to 5% increases,

11 September 2020 policy ending 9606 record of call from Mr D

11 September 2020 policy 7406 letter from Aviva to Mr D confirming that at the original retirement date (age 60) the sum assured was £20,155, regular bonus £24,559.71 and final bonus £63,003.03 total £107,717.74. As he didn't take benefits the fund is on deposit at 7% per annum. At 8 September 2020 the transfer value was £108,781.22.- not guaranteed.

11 September 2020 policy 9606 estimated fund £201,521.16 as at 10 September 2020. GAR income of £17,523.60 with 5% increases.

15 September 2020 policy 9606 confirmed rate of annuity for single life pension, escalating at 5% with 5 years guarantees. The GAR rate is £100 pension for every £1,150 fund at age 60. A quote based on the value at 10 September 2020 was sent on 10 September 202 the value at that date was £201,521.16

20 September 2020 Aviva wrote re policy ending 9606

- to confirm an annuity rate of £100 per £1,150 of pension with 5% per annum increases and a 5 year guaranteed.
- It said the fund value on 10 September 2020 was £201,521.16 but wasn't guaranteed.

29 September 2020 –policy 7406. adviser chased to make sure they have received forms for the annuity set up. Aviva confirmed they had been received and take up to 5 weeks to set up. All docs scanned under policy ending 7406.

2 October 2020 policy 9606, letter from Aviva re complaint

2 October 2020 policy 9606 call record from Mr D . Aviva apologised Offered £200 and arrears of pension.

12 October 2020 Policy 9606 telephone call record from Mr D chasing payment.

16 October 2020 policy ending 9606 telephone call record from Mr D.

19 October 2020 policy 9606 letter to Mr D re lifetime allowance

27 October 2020 policy ending 7406 re lifetime allowance.

29 October 2020 policy 9606 telephone call record Mr D chasing annuity

23 June 2021 policy 9606 loss assessment based on retirement date of 10 September 2020 and an annual pension of £17,569.11. The annuity at 19 August 2020 would have been £17,452.32 so the actual basis was higher. Loss of income for 22 days £841.46.

I have set out this timeline in detail as I think it creates a helpful picture of what was happening and the timeframe over which it occurred.

It is clear to me that Aviva provided conflicting and incorrect information over a long period of time. It accepts this in relation to policy 9606 but I think it is clear that this was the case for both policies and the time line of events supports that.

Where Aviva has made an error, such as providing incorrect information as was the case here, I can make an award for any financial loss and for distress and inconvenience.

Putting things right

I have considered an award for financial loss. The purpose of making such an award is to put Mr D as close as possible back in the position he would have been but for Aviva's mistake.

Aviva says the annuities actually paid are higher than they would have been had they been set up sooner at Mr D's NRD. It said Mr D had lost 22 days of income and arranged to send him £841.46. It said it issued option packs on 29 March 2020 for his NRD but heard nothing until the IFA requested further information on 22 May 2020. It said there was no evidence Mr D would have taken his pension at age 60. But I don't agree. I asked Mr D whether he would have retired at age 60 and he confirmed he would. There was a long period of time over which he and his financial adviser had asked for information. That period started over a year before his NRD and as the timeline shows enquiries increased significantly in the 5 months prior to his NRD. In the final weeks before his NRD Aviva had sent valuations information that simply didn't make sense compared to earlier figures so I think it would have been very difficult to be confident any of the information was correct at the time of his NRD. Given this evidence I think it is reasonable to accept that Mr D would have retired and taken his annuity pensions at his NRD as he says he would have, had he been able to do so.

I accept that the amount used to purchase the annuities when they were finally set up should have been higher than the amount at NRD. I say should because many of the letters say that the capital was moved into a deposit account at NRD bearing interest at 7%. However I do not know what actual figures was used by Aviva, nor whether it actually applied 7% or some other figure, so I cannot be certain that was actually the case.

It is clear that Mr D lost the benefit of monthly pension income for the months between his NRD and the date his annuity pensions started to be paid. The annuity rate was fixed in the

policy terms so would not have changed during the period of delay. I think it is reasonable to direct that Aviva should now pay those missing instalments. Further as Mr D was deprived of the use of those instalments of pension they should be subject to interest at 8% per annum simple from the date they would have been paid to the date of actual payment.

But I accept that to be fair Aviva should get some credit for the fact that the monthly pension payment may now be higher due to the delay. The investigator proposed a basis for redress which took this into account. Neither party has objected to it. Given this I think it is reasonable to use the basis he proposed.

The investigator proposed the following which I think is fair..

How to put things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Mr D as close as possible to the position he would probably now be in if he had been given the information necessary to take his benefits at age 60 and he did take his benefits at that date.

I am satisfied that what I have set out below is fair and reasonable given Mr D's circumstances and objectives when he invested.

To put things right Aviva should either

- (A) Ideally unwind Mr D's annuities and re-write them with a start date of his 60th birthday and pay him any arrears of pension unpaid as a consequence of the pension not starting at age 60 plus interest on those arrears from the date they should have been paid to the date of actual payment at 8% per annum simple. This would be the most favourable solution as it would take account of all the factors involved, including the indexation associated with the pension. However, I understand this is sometimes not possible.

OR, If a re-write isn't possible, to compensate Mr D fairly Aviva should:

(B)

1. Calculate the amount of pension income Mr D would have received each month, assuming his annuities from both policies had been in force from his 60th birthday, up to the date it was actually put in force.
2. Calculate interest at 8% per annum simple on each of the annuity payments from the date they ought to have been paid had they started at age 60 until the date the redress is paid to him under this direction. This when added to the amount under 1 above, will give the gross redress figure.
3. The annual annuities actually paid to him might be higher than the annuity Mr D would have received on his 60th birthday because the value applied to secure those annuities was greater than would have been the case at age 60. If that is the case, Aviva might want to offset 10 years' worth of the difference between the amount of the annuity currently in payment and the amount that would have been put into payment at age 60 (if the current amount in payment is higher), from the gross redress figure calculated under 1 and 2 above.

Aviva can also deduct the amount of £841.46 from the amount due under (A) or (B) if it has

already paid that amount to Mr D.

The compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr D won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr D is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%.

Aviva must also provide details of the calculation to Mr D in a clear, simple format.

Income tax may be payable on any interest paid. If Aviva considers that its required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much its taken off. It should also give Mr D a tax deduction certificate in respect of interest if Mr D asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

There is guidance on how to carry out calculations available on this service's website and details were supplied by the investigator.

I have also considered an award for distress and inconvenience. Such an award is not to punish Aviva but to reflect the impact of the mistake on Mr D. We all experience inconvenience in our day to day lives but I think the prolonged period over which this happened is much greater than that. I think the impact was significant. I say that due to the long period of time over which the confusion persisted. And that it needed a lot of extra effort from Mr D and the IFA to point out to Aviva that the information it sent couldn't be correct and conflicted with the policy and earlier information or was incomplete in terms of details of the GAR etc. For those reasons I think an award of £600 is fair and reasonable in the circumstances. For the avoidance of doubt Aviva need only pay a further £400 if it has already paid the £200 it offered.

My final decision

I uphold this complaint.

I direct that Aviva Life & Pensions UK Limited should within 30 days of this service notifying it that Mr D has accepted this decision pay Mr D:-

1. £600 for distress and inconvenience (for the avoidance of doubt it need only pay a further £400 if it has already paid £200 it offered.)
2. Compensation for financial loss on the basis set out above in my section headed 'putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 1 December 2022.

Colette Bewley
Ombudsman