DRN-3906460

## The complaint

Mr H has complained that Aviva Life and Pensions UK Limited delayed the transfer of his pension to his annuity provider which resulted in Mr H receiving a lower annuity rate than he would have received had Aviva completed his pension transfer on time.

## What happened

Mr H held three pension policies with Aviva. I will refer to these three plans as plan 1, plan 2 and plan 3. In April 2021 Mr H contacted Aviva and told them that he wanted to access retirement benefits from all of his pension policies. Plans 1 and 2 combined made up a relatively small element of the overall retirement benefits that Mr H held with Aviva. Therefore, the majority of Mr H's Aviva retirement benefits were held in plan 3.

Mr H decided that he would take his retirement benefits through an annuity. The annuity was to be purchased through another pension provider. I will refer to the pension provider that Mr H had chosen to set up his annuity with as firm A.

Mr H received an annuity quotation from firm A. The quotation had been prepared by firm A in late July 2021 and the annuity rate offered was guaranteed until early September 2021. The quotation stated that: "*If the annuity is purchased outside the quote guarantee period, current rates will apply. As a result your actual pension payment may be less than the amount shown in this quote*".

Firm A received the transfer values for plans 1 and 2 from Aviva in the first half of August 2021.

In mid-August 2021 Mr H sent the necessary paperwork to Aviva so that they could also transfer pension plan 3 to firm A. Once this transfer was completed then the annuity could be set up for Mr H with firm A, using the combined transfer values from his Aviva plans 1, 2 and 3.

Aviva completed the transfer of plan 3 at the end of September 2021. However, the guarantee period on the annuity quotation that Mr H had received from firm A had expired in early September 2021. This meant that Mr H could no longer benefit from the annuity rate that had originally been quoted by firm A, instead he had to set up his annuity with the annuity rate that was applying when the transfer of plan 3 from Aviva was completed. By then the annuity rate had fallen. Mr H proceeded with the purchase of his annuity with firm A, using the combined transfer values from his Aviva plans 1, 2 and 3.

Mr H complained to Aviva in September 2021 about the length of time that they had taken to complete the transfer of his pension plan 3 to firm A.

Aviva responded to Mr H's complaint in October 2021. Aviva admitted that they had taken too long to complete the transfer of Mr H's pension. They said that if they had completed the transfer within a reasonable timescale, then the transfer would have been completed in late August 2021. This would have meant that firm A would have been able to set up Mr H's annuity before the annuity rate guarantee period had expired.

Aviva went on to say that when they completed the transfer of Mr H's pension in late September 2021, the transfer value was approximately £500 more than it would have been had the transfer been completed in late August 2021. This was because Mr H's Aviva pension policy increased in value during this period. Aviva said that as a result of this there was no financial loss to Mr H.

Aviva did however say that they would contact firm A to obtain information so that they could complete a financial loss calculation to confirm whether Mr H had lost out when his annuity was set up.

Finally, Aviva said that they would pay Mr H £150 to cover the trouble and upset that he had suffered as a result of the delays they'd caused.

However, Aviva didn't contact firm A to ask for the information they said was needed to complete their loss calculation until December 2021. Because of this delay Aviva increased their offer of compensation to Mr H from £150 to £350.

Aviva received a response from firm A to their request for information in late December 2021, but Aviva went back to firm A on the same day to ask for further information. Aviva didn't get a reply to this request from firm A, so Aviva chased firm A for this further information in March 2022 and again in May 2022.

I haven't seen any evidence to show if Aviva has ever received a reply from firm A. However, Aviva have not completed their financial loss calculation.

Mr H said that in spite of the transfer value sent by Aviva to firm A being higher, the income that he is receiving from his firm A annuity is approximately £160 a year less than what he would be receiving if his annuity had been set up within the guarantee period of his original quotation.

Mr H didn't accept Aviva's offer and brought his complaint to the Financial Ombudsman Service. An Investigator in the Financial Ombudsman Service reviewed Mr H's complaint, which they upheld.

Aviva have not responded at all to the Investigator's view and as a result Mr H's complaint has been referred to an Ombudsman.

**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.

Aviva have admitted that they took too long to complete the transfer of Mr H's pension policy. As a result of Aviva's delay, the guarantee period on the annuity quotation that Mr H had received from firm A had expired by the time that the transfer was completed.

This meant that Mr H had to set up his annuity later than would otherwise have been the case, using the annuity rate that was then applying. Mr H says this annuity rate was lower than the rate set out in the original quotation that he had received from firm A in late July 2021.

I therefore think that Aviva's delay caused Mr H to lose out on a guaranteed annuity rate. And so it's possible he is now receiving less annuity income than would have been the case if Aviva had completed the transfer of Mr H's pension without delays. I also think that because of Aviva's errors it's possible that Mr H has suffered a financial loss.

The Investigator within the Financial Ombudsman Service upheld Mr H's complaint within their view. However, Aviva have not responded to the Investigator's view at all.

As Aviva have admitted that they took too long to complete the transfer of Mr H's pension, and I think it's possible that Mr H is now receiving less annuity income each month than would've been the case if Aviva had not delayed his transfer, I am also upholding Mr H's complaint.

**Putting things right**

I think that it's reasonable and fair that Aviva should now put Mr H back in the financial position that he would have been in had it not been for their delay in completing the transfer of his pension to firm A. Aviva therefore needs to compare the annuity income that Mr H is receiving with the annuity income that Mr H would be receiving had it not been for their errors.

I think that Mr H has two areas of potential loss. The first of these is his potential past loss, which is the potential loss that Mr H suffered due to his annuity income payments starting later, and at a lower annuity rate, due to Aviva's delays. To calculate this element of Mr H's potential loss Aviva needs to:

- Calculate the total of all the notional income payments which Mr H should have received from his annuity to date of settlement, had Aviva not delayed his transfer, with interest added to each payment at 8% per year simple from the date it was due to the date of my final decision. This is figure "A".

- Calculate the total of all the income payments which Mr H has actually received from his annuity to date of settlement, with interest added to each payment at 8% per year simple from the date it was due to the date of my final decision. This is figure "B".

- Mr H's past loss is figure "A" minus figure "B". If the answer is negative, there's a past gain and no redress is payable.

Aviva should pay any loss calculated directly to Mr H. The annuity would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

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

I think that the second potential loss that Mr H has suffered is his future loss. This is the higher annuity income that Mr H might have received for the rest of his lifetime, had it not been for Aviva's delays.

To calculate this element of Mr H’s potential loss, Aviva, needs to complete the following:

- Calculate the notional annual gross annuity income which Mr H should have been receiving from the date of my final decision onwards, had it not been for Aviva’s errors. This is figure “X”.

- Calculate the actual annual gross annuity income that Mr H is now receiving from the date of my final decision onwards. This is figure “Y”.

Hr H’s future loss each year is figure “X” minus figure “Y”. This is figure “Z”. If figure “Z” is negative, then there’s a future gain and no redress is payable to Mr H.

Aviva will then need to calculate what the cost would be to replace any lost future annuity income as calculated as figure “Z”. They should do this by establishing how much it would cost to buy an annuity on the open market, with the same features as the annuity that Mr H has set up with firm A, to provide annuity income of figure “Z”. Aviva will need to refer to published annuity rate tables and get a quote from a competitive provider.

The purchase price of this open market annuity is Mr H’s future loss. This should be paid directly to Mr H as a lump sum after making a notional reduction to allow for income tax that would otherwise have been paid at Mr H’s marginal rate of income tax. Again, I think that it’s reasonable to assume that Mr H is likely to be a basic rate taxpayer in retirement, so the reduction would equal 20%.

Aviva has offered Mr H £350 in respect of the distress and inconvenience that he has suffered as a result of Aviva’s delays. Aviva should now pay this sum to Mr H.

If payment of compensation is not made within 28 days of Aviva receiving Mr H’s acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid to Mr H. If Aviva consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they need to tell Mr H how much they have deducted and give Mr H a tax deduction certificate in respect of interest, should Mr H ask for one. Mr H will then be able to reclaim the tax on interest from HM Revenue & Customs if appropriate.

As I’ve said, the purpose of the above redress is to put Mr H in the position he would have been had the error not occurred. It’s theoretically possible that one of the above stages might show a loss and other show a gain. Where this happens, I would expect Aviva to offset one part against the other, for example, subtracting a loss from a gain to arrive at a net value, once all tax and interest calculations have been taken into consideration.

Finally, if they have not done so already, Aviva should also provide Mr H with a statement showing the value of his pension the day it was transferred together with a calculation showing the value of Mr H’s pension on the date that it should’ve been transferred, had it not been for Aviva’s errors.

## My final decision

I am upholding Mr H’s complaint against Aviva Life and Pensions UK Limited.

Aviva Life and Pensions UK Limited now need to pay Mr H £350 and also complete all of the actions detailed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 29 June 2023.

Ian Barton
**Ombudsman**