

The complaint

Ms C complains that Aviva Life & Pensions UK Limited should honour the original annuity quote it gave her.

What happened

Ms C had a personal pension plan with Aviva, paying into it until April 2022. In November 2021 Aviva sent her a 'wake up' letter as she was approaching her chosen retirement date of 11 April 2002, which was her 70th birthday. The pack advised Ms C that the current cash transfer value of her pension was £225,045.80 and that her policy included the important benefit of a Guaranteed Annuity Rate ('GAR'). The pack explained that this meant Ms C could get a higher annuity from Aviva than from another company and that she would lose this option if she cashed in her pension, or transferred it or bought an annuity with another provider.

On 25 February 2022, Aviva sent Ms C a retirement options pack which set out various options for taking her pension benefits. Aviva advised Ms C that she could expect to receive a guaranteed annual pension of £24,754.92. On 7 March 2022 Ms C asked Aviva for some additional quotes based on taking £10,000 in tax-free cash and with an annuity being paid both in advance and in arrears. On 5 April 2022 Ms C called Aviva to chase the quote. Shortly after, Aviva sent Ms C the additional quotes she'd requested and Ms C then completed the claim forms accepting the quote for the single life guaranteed annuity of £24,754.92 with no tax-free lump sum and payable monthly in advance.

On 12 May 2022 Ms C called Aviva to chase her pension claim. Aviva told Ms C that it was still processing it. On 6 June 2022 Aviva called Ms C to tell her that it had made a mistake when calculating her GAR pension and that it would only pay her £21,714.84 a year instead of £24,754.92. Unhappy with what Aviva had told her, Ms C raised a complaint.

Aviva looked into Ms C's complaint and issued its final response letter on 19 July 2022. It accepted that there had been delays in processing her pension claim and that it had given her an incorrect annuity quote. It said its actuaries had confirmed that Ms C's pension fund value would only support an annual pension of £21,714.84. It also said that it had paid her April, May, and June pension payments late but going forward she would receive her monthly payments on 11th of each month starting on 11th August 2022. Aviva said it was sorry that it had given Ms C an incorrect quote in the first instance and it said it was sorry for the poor service, errors and delays. For the inconvenience it caused Ms C, Aviva paid her compensation of £450. Aviva also paid Ms C late payment interest of £14.88.

Unhappy with the outcome of Aviva's investigation, Ms C complained to this service. She told us she wanted Aviva to honour the first annuity quotation it had given her despite it being made in error. Ms C also complained about the poor service she'd received from Aviva. Our Investigator looked into Ms C's complaint and recommended that it was upheld in part. She said:

- there had been a one-off administration error by Aviva when it assumed Ms C was a male and based the quote on the wrong gender.

- she understood that Ms C was upset to find out about Aviva's error with her original pension calculation and that she would be receiving a smaller pension than she had originally been led to believe. But our Investigator didn't think it was fair to ask Aviva to honour the first annuity quote because it wasn't a true reflection of the pension's value and because it was this Service's aim to put consumers back in the position they would have been in but for a business's error. In Ms C's case this meant leaving her with the annuity as it currently stood.
- she agreed that there had been delays in Aviva's processing of Ms C's pension claim and noted that it had offered to pay her interest for the late payment of her pension based on the Bank of England rate + 1%. However, our Investigator said Aviva should recalculate the interest due to Ms C for these late payments in line with DISP rule 3.7 in the Financial Conduct Authority's Handbook which cited an 8% simple per year interest rate. She said the interest should be calculated using this rate from the date each payment was due to the date it was actually paid on 22 June 2022.
- she understood the stress Ms C had felt but thought the compensation of £450 paid by Aviva to Ms C was fair and in line with such awards made by this service to complainants in similar circumstances.

Ms C replied to say that she welcomed the recalculation of interest recommended by our Investigator but she said communications with Aviva had been stressful because she had no single point of contact. Ms C also said that the delays in making her payments were such that she could have waited for the annual bonuses to be added to her pension on 1 July 2022.

Ms C said her main concern was if the error in calculating her pension hadn't been caused by gender then what had caused it. She said Aviva told her in a phone call that the first calculation had been based on the assumption that she was male. Ms C said she'd not seen the two calculations either and, she noted, none of Aviva's correspondence refers to the 'gender error'. Ms C referred to the 2021 EU Gender Directive which required annuity rates for men and women to be the same. Ms C said she wanted her complaint looked at further.

Our Investigator replied to Ms C to say that whilst she understood Ms C's frustrations it wasn't always possible for businesses to provide customers with direct contact information. And she said she'd seen no evidence that Ms C had asked Aviva to delay paying her pension so that she could benefit from the bonuses due on 1 July 2022. Our Investigator said that whilst Aviva had confirmed there had been an administrative error when they calculated Ms C's original annuity it hadn't ever confirmed what that error was exactly. Our Investigator confirmed again that she thought the compensation Aviva had paid was fair in Ms C's circumstances.

Aviva responded to say that it accepted our Investigator's opinion providing it could deduct the interest it had already paid to Ms C from the new interest calculation. Our Investigator agreed and she also asked Aviva if it could provide the calculations for the two guaranteed annuity amounts and to highlight where, in the calculation for the first annuity, the error had occurred. Our Investigator also asked Aviva for a copy of the phone call with Ms C where it had told her the first calculation was higher based on the assumption that she was male.

Aviva provided the call recording. Our Investigator listened to it, noting that Ms C had been told that the quote was incorrectly calculated on the basis that she was male but that that error had been corrected. She also noted that during the call Aviva told Ms C that had she been male, then the quote would have been higher. Our Investigator referred Aviva to the EU Gender Directive and asked if Ms C had been given a lower quote based on her gender.

Aviva replied and said the EU Gender Directive covers annuity rates but not the guarantees under the policy. Consequently it said GARs remain different for males and females as they

fell outside of the Directive. It said that the administrative error was that Ms C's gender was incorrectly input as male so when the benefits were calculated the original quotation was based on male GARs. Aviva said Ms C now had the correct GAR based on her gender. Aviva provided the calculation for the second annuity quote and said it was still trying to obtain the calculation for the first one.

Our Investigator told Ms C what Aviva had said and explained that whilst she was yet to receive the calculation for the first annuity quote she had seen the retirement pack Aviva had sent Ms C. She said this confirmed Ms C's plan included guarantees in the form of GARs so, despite not seeing the first calculation, she had no reason to dispute Aviva's explanation that the original quotation was higher owing to its error in inputting the incorrect gender. Our Investigator said that as pension providers are allowed to complete GAR calculations based on gender, in line with plan's original policy terms, she wouldn't be asking it to honour the first quote it gave Ms C. Our Investigator said that she understood Ms C's frustration over the error but wouldn't be changing her view about the complaint.

Ms C asked if Aviva could pay her the recalculated interest without delay which Aviva agreed to do. Ms C also asked for her complaint to be referred for an ombudsman's 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.

I can understand Ms C's frustration and disappointment at being told she was actually to receive a much lower annuity than the one that Aviva had originally quoted her. And I can also understand why Ms C would want Aviva to honour the original quote it gave her. But I'm afraid I'm unable to agree with her that it should. I'll explain why.

Firstly I should say that I'm satisfied that legacy pension plans with guaranteed annuity rates fall outside the EU Gender Directive such that the underlying guarantees under the plans remain different for males and females. So Aviva isn't doing anything wrong in using gender in its GAR calculations. And I don't think the absence of the calculation for the first quotation precludes me from reaching a fair and reasonable decision on Ms C's complaint. I say this because Aviva told Ms C during a call that the quote had been generated as a result of it inputting the incorrect gender. So, it's admitted what went wrong. I've seen no evidence that the second quotation was lower for any other reason.

So Aviva, by its own admission, made an error when it calculated Ms C's original annuity quote. It input the wrong gender in its system which resulted in the generation of a much higher guaranteed annuity quote than Ms C was, in fact, entitled to. When Aviva realised its error and adjusted its systems to reflect Ms C's correct gender the annuity quoted was lower as a result.

When a business makes an error, this Service aims to put the consumer back in to the position they would have been in had the error not occurred. Here, had Aviva input the correct gender at the outset Ms C the correct calculation would have been made and the correct quotation conveyed to Ms C. Ms C would have received, from the outset, the same annuity that she currently enjoys. What Ms C has suffered as a result of Aviva's mistake is a loss of expectation; for a short while she expected to receive a retirement income of over £3,000 more per year than she was actually entitled to. But the fact remains, had things gone as they should, Ms C was never entitled to an annuity greater than £21,714.84.

Of course Ms C has suffered some trouble and upset as a consequence of her lost expectation for which she should be compensated, but I can't agree that it would be fair to

make Aviva honour something to which Ms C was never entitled to in the first instance. To do so wouldn't be reasonable and wouldn't be placing Ms C back in the position she should be in but for Aviva's error.

Where a financial business, through its words or deeds, causes trouble and upset to a consumer above and beyond that which is normally associated with the matter being transacted, this Service can require it to pay the consumer compensation. Here I can see that Ms C was caused distress as a result of being told her annual pension was going to be significantly lower than she had originally thought.

And I can see too that Aviva also delayed the processing of Ms C's pension claim that resulted in her having to chase it to check that it was being progressed. Aviva has admitted that it failed to process Ms C's pension claim within its normal 10-day time scale so that when the annuity was eventually set up on 22 June 2022 three payments had already been missed. I can see that Aviva paid Ms C the missed payments the same day along with her July payment. But there were delays caused by Aviva which caused Ms C distress and inconvenience.

Aviva has accepted that it failed to provide Ms C with a suitable level of service and it has paid her compensation – for the delays, errors and late payments – of £450. Ms C has said she thinks that the frustration, stress and inconvenience she has been caused is such that Aviva should pay her further compensation of £450.

I've thought carefully about the shortcomings in Aviva's service and the trouble and upset it has caused Ms C but I think Aviva's compensation payment of £450 is fair and reasonable in all the circumstances of Ms C's complaint. In reaching this decision I've taken into account the compensation awards this Service has made in similar complaints and I'm satisfied that this award is in line with those. Indeed, had this complaint passed across my desk without an award of compensation having already been made it is unlikely that I would have awarded any more than this. So I'm not going to make Aviva pay any more.

The issue of interest on the late payments of Ms C's pension is not in dispute as Aviva has agreed to recalculate the amount due to Ms C based on this Service's usual rate of 8% simple per year from the date the payments should have been made to the date they were made on 22 June 2022. Aviva can deduct from the total the original interest sum of £14.88 it already paid Ms C.

Finally, for the sake of completeness, I note Ms C's comment that the delays in making her payments were such that she could have waited for the annual bonuses to be added to her pension on 1 July 2022, but I've seen no evidence that she at any point asked Aviva to delay paying her pension so that she could benefit from any bonus payment due on 1 July 2022. It follows that I can't fairly hold Aviva responsible for something it was unaware of.

Putting things right

If it has not already done so, Aviva should re-calculate and pay to Ms C the interest on each delayed monthly annuity payment – using this Service's usual rate of 8% simple per year – from the date each payment was due to be paid to the date the payments were made on 22 June 2022.

HM Revenue & Customs may require Aviva to take off tax from this interest. If asked, it must give Ms C a certificate showing how much tax it has taken off.

My final decision

My final decision is that I uphold this complaint in part and I require Aviva Life & Pensions UK Limited to take the steps I've set out above in the *'Putting Things Right'* section.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 30 June 2023.

Claire Woollerson
Ombudsman