

The complaint

Mr J complains that HUB Financial Solutions Limited provided him with a poor service when he decided to take out an annuity. And its poor service resulted in his annuity being delayed, he believes this has caused him a loss.

What happened

Our investigator set out the background to this complaint in his view. As this is not in dispute I've included a slightly adapted version of this below setting out the context to this complaint.

In November 2022 Mr J asked HUB for advice on his retirement. An Aviva annuity quote was produced dated 29 November 2022 and was sent to Mr J along with an application form on 30 November 2022. This annuity quote reflected a purchase price of £295,143.25 for an annual income of £20,707.80 (monthly £1,725.65). The ceding scheme plan contained only crystallised funds as Mr J had previously withdrawn his tax-free cash allowance. According to HUB the quote was guaranteed for 14 calendar days or until 13 December 2022. Mr J said he posted the application form back to HUB on 7 December 2022.

HUB received Mr J's signed application form back on 22 December 2022. At the time there was strike action by Royal Mail which likely accounts for the amount of time it took for Mr J's forms to be received by HUB.

Due to the annuity application being received after the annuity quote guarantee period had lapsed, and because Aviva had an annuity rate change on 1 December 2022, HUB needed to get a revised annuity quote from Aviva. It appears due to staff sickness at HUB, actioning the requote and deciding how to proceed was delayed.

HUB submitted the application to Aviva on 11 January 2023 which reflected a purchase price of £295,143.25 for an annual income of £19,304.04 (monthly £1,608.67). And the monies to purchase the annuity were received by Aviva two days later on 13 January 2023.

Aviva received a higher value than was reflected on the annuity quote. Aviva received £298,111.00 from the ceding scheme and this actually purchased an annual income of £19,568.16 (monthly £1,630.68).

The annuity wasn't set up by Aviva until 24 February 2023, due to its work position and Mr J received his first payment on 27 February. I understand the annuity was backdated to a start date of 13 January 2023, which is when Aviva said they received the funds.

Mr J complained to HUB on 22 February 2022. HUB replied to Mr J and upheld his complaint for the poor service it provided, in particular that he had to make numerous calls for updates and that he didn't receive a call back. However, HUB didn't address why it took from 22 December 2022 to 11 January 2023 to submit Mr J's annuity application to Aviva. HUB offered Mr J £100.00 for the distress and inconvenience it caused.

Our investigator looked into matters and spoke to both parties. HUB told us that in relation to the forms received on 22 December and why it didn't proceed immediately then was due to

staff sickness. It wasn't until that member of staff returned on 11 January that the decision was made to proceed with Aviva as the requote had shown Just providing a potentially better annuity. The notes say that the member of staff remembered speaking with Mr J and he wished to proceed with Aviva as Just offered a range and he didn't want to get a guaranteed quote with them. The same day the application was sent to Aviva.

The investigator upheld the complaint, he said the evidence showed that HUB should've processed the application on 22 December and sent it over to Aviva. He said that there was an agreement with Mr J that it would be processed unless the income had changed by 10% or more. And HUB were able to carry out the required work on the same day on 11 January when the member of staff returned. So the evidence suggested this ought to have been possible on 22 December when the application was received. He said the annuity could then been set up Aviva on 28 December, which was two working days later. And that a loss calculation should be based on the annuity starting on 28 December compared to the actual date of 13 January – which is the date Aviva backdated the annuity to. The investigator also felt an additional £200 should be awarded as HUB hadn't considered due to the delays and lack of information he'd received, Mr J had to sell some shares so that he had income whilst he was waiting for his first payment from his annuity. Which wasn't received until late February.

HUB responded to say it disagreed with the findings relating to the annuity start date. It said it was always due to start on 13 January as this was Mr J's selected annuity start date.

The investigator responded to say this was the first time HUB had mentioned this, it didn't make sense as Mr J had previously expected the annuity to start in December. And his funds were already crystallised and there was no evidence the annuity had a selected retirement date. He said HUB had provided no evidence to substantiate this statement and if it did have evidence it should submit this to our service to consider.

To date we've heard nothing further from HUB on this matter.

Mr J responded to provide a couple of corrections regarding the dates referred to by the investigator.

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.

Having done so, I've agreed with the conclusions reached by the investigator for broadly the same reasons. And HUB's final point hasn't persuaded me to alter the outcome reached.

I say this because the evidence we do have doesn't support HUB's assertion that the annuity would've always been payable on 13 January. And it hasn't provided any evidence to support this claim either. I have noticed that 13 January does fall on Mr J's birthday but it appears this is just a coincidence rather than the selected annuity start date for Mr J. Mr J's funds were already crystalised so this wasn't a case that Mr J was taking his benefits at a specified date following contact by a provider. And he had already reached the minimum age to take benefits, so it wasn't a regulatory requirement that it couldn't start earlier than that date. But tellingly the annuity quotation originally produced by Aviva back in November had an expected start date of 1 December 2022. So this strongly suggests there wasn't a set start date and certainly not of 13 January 2023. And Aviva refer to the start date of 13 January being selected as it was the date they received the funds, not the selected retirement date. Nowhere in any of the documentation or communication with Mr J can I see that this selected retirement date was mentioned and all the evidence suggests that there

wasn't a set date. Therefore I'm satisfied that the annuity could've started earlier if it wasn't for the various delays that meant the forms and funds weren't sent across until January 2023.

I accept that a large part of the delay from the original quotation was likely caused by industrial action taken by Royal Mail. But Mr J's forms were seemingly received on 22 December and HUB's staff began to work on his case on 23 December, and was able to run the requote that same day (which HUB later confirmed to be within his 10% tolerance and the figures involved show this). The member of staff who ran the requote said this now showed another provider, Just, came out on top and not Aviva. And so she contacted what I assume is their customer service member of staff assigned to Mr J's case, to ask them to check with Mr J how he wished to proceed. But there was no reply from that member of staff until 11 January due to sickness. The member of staff replies on 11 January to say, *'this one in the request sorry so late I have been off sick, I remember speaking with this customer and they went with Aviva as Just offered range and they didn't want to get a guaranteed one from them can we proceed with the Aviva one then?'*

The member of staff who ran the requote then said she could now proceed with this and sent the application to Aviva that same day. The investigator noted it was unclear when this conversation occurred with Mr J as neither the business or Mr J has made note of it in their respective timelines. But in its system notes following the initial quote on 29 November 2022, I can see that actually at the time of the first quote, Just came up on top then as well. And a follow up call was had with Mr J and he confirmed he preferred to proceed with Aviva and had a 10% tolerance in terms of income variance.

So as the income change was within the 10% tolerance and Mr J had already confirmed his preference for Aviva over Just, I think HUB should've proceeded based on the information it already had on 23 December. Running an efficient service and acting in its customers best interests, I think it's fair to say the previous correspondence with Mr J ought to have been recorded for others to see. But it seems this was not picked up on if it was. And in any case the sickness of Mr J's contact within HUB ought to have been recorded and visible so HUB could've arranged for another member of staff to call Mr J if it needed to. I understand around this time of year HUB will likely have been busy, sickness can be quite prevalent and workforces are already reduced due to annual leave but Mr J was paying a not unsubstantial sum for it to set up his annuity for him. So I think it is fair to expect a level of service that means controls are put in place that delays won't be caused due to a particular member of staff's absence. Overall, after considering this carefully, HUB ought to have been able to send the application to Aviva on 23 December and it's reasonable to conclude this would've meant the annuity could've had a start date of 28 December. In reality the application was sent on 11 January and Aviva used a start date of 13 January, so taking into account the bank holidays, 28 December seems a fair date to use.

The investigator also increased the distress and inconvenient payment to £300, HUB had previously offered £100. I don't think this is unreasonable either, HUB failed to return calls with Mr J including a promised manager call back. It didn't keep Mr J suitably updated throughout the process and the stress this would've caused was exacerbated by the fact the delay in annuity being processed meant Mr J had no income and was in financial difficulty. HUB was aware of this but it still failed to call back Mr J when he let it know of the impact this was having on him. I understand Mr J had to sell down shares to cover costs. And whilst most of the timeline from the initial quote to payment wasn't in HUB's control it did cause some delays and its poor customer service will have contributed to Mr J's distress.

Putting things right

In deciding what would be fair compensation, our aim is to put Mr J as close as possible to

the position he would probably now be in if HUB hadn't caused a delay.

It's my view that Mr J's annuity would've started on 28 December 2022 based on the plan's transfer value of 22 December 2022.

Therefore HUB should obtain:

- 1) A notional value of the plan as of 22 December 2022.
- 2) The annuity rate that Aviva would've applied on 28 December 2022.

HUB should then calculate what notional income would've been purchased by 1) & 2).

Past loss

HUB should calculate:

A) Total of all the notional payments which Mr J should have received from his pension, net of his marginal rate of tax, from 28 December 2022 with interest added to each payment at 8% per year simple from the date it was due to the date of settlement.

B) Total of all the actual payments which Mr J has actually received from his pension, net of his marginal rate of tax, from 28 December 2022 with interest added to each payment at 8% per year simple from the date it was due to the date of settlement.

C) Past loss = A – B. If the answer is negative, there's a past gain and no redress is payable.

In working out the net payments, HUB should assume that Mr J was a 20% rate taxpayer.

Future loss

HUB should calculate:

D) The notional gross pension per year which Mr J should have been receiving from the date of settlement onwards.

E) The actual gross pension per year Mr J currently will receive from the date of settlement onwards.

F) Future Gross Loss per year = D – E. If the answer is negative, there's a future gain and no redress is payable.

G) HUB must then work out what it would cost to replace any lost income in F) by buying an annuity on the open market with these features. It will need to refer to published annuity rate tables and get a quote from a competitive provider.

H) The purchase price of the annuity found in G) is Mr J's gross future loss. This should be paid directly to him as a lump sum after making a notional reduction to allow for income tax that would otherwise have been paid at his likely rate on the income in F – presumed to be 20%.

Offsetting where there's a past loss and future gain, or vice versa

We usually think it's fair and reasonable to offset one against the other. So HUB may do this in this instance. However, the offsetting can only be done after any tax adjustments have

been made to the future loss, so that it's on a net-net basis.

In addition, HUB should pay Mr J a further £200 to the £100 already offered for the distress and inconvenience caused.

If payment of compensation is not made within 28 days of HUB receiving Mr J's acceptance of my final decision, interest must be added to the compensation including the distress and inconvenience payment at the rate of 8% per year simple from the date of my final decision to the date of payment.

HUB should provide the details of the calculation to Mr J in a clear, simple format.

Income tax may be payable on any interest paid. If HUB deducts income tax from the interest, it should tell Mr J how much has been taken off. HUB should give Mr J a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

My final decision

I uphold Mr J's complaint against HUB Financial Solutions Limited and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 7 March 2024.

Simon Hollingshead
Ombudsman