

## The complaint

Mr C complains that Aviva Life & Pensions UK Limited ("Aviva") unfairly delayed the start of his annuity meaning that he has missed out on one month's income.

## What happened

I issued a provisional decision on this complaint in January 2024. In that decision I explained why I didn't think the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

*Mr C held pension savings with Aviva. Those pension savings arose as a result of a section 32 buy out plan that he opened with the firm in 1988. The plan provided Mr C with a guaranteed minimum pension ("GMP") when he reached 65 years of age in November 2022.*

*In June 2022 Mr C engaged a financial advisor to provide him with assistance in taking his pension benefits. I can see that the advisor wrote to Aviva to ask for information about Mr C's pension plan and the options that were available to him. In addition to some standard questions the advisor appended three further handwritten questions asking for information on the annual value of the GMP, details of any tax-free cash options available to Mr C, and information about any increases that would be applied to the GMP if Mr C deferred taking his pension for a year.*

*It doesn't seem that the standard information Aviva sent to the financial advisor answered those additional questions. So the advisor had a phone conversation with Aviva in early July. It provided Mr C with the answers it received to those questions in a handwritten note appended to the standard information Aviva had provided. Although the quality of the copy of that information is poor, it seems that Aviva confirmed the amount of pension Mr C would receive at age 65; that the GMP would be increased by 1% for every 7 weeks that its payment was deferred; and that further information about any tax-free cash would be available when Mr C was closer to his retirement age.*

*In September 2022 Aviva sent Mr C further details of his pension benefits and the forms he would need to complete in order to claim his annuity. Those forms provided details of the benefits on Mr C's assumed retirement date of 12 November 2022. But, Mr C says, they didn't give any deadline for their return. Mr C returned the forms to Aviva in early December and they were received by the firm on 14 December.*

*Aviva contacted Mr C two days later to clarify whether he had a spouse – he confirmed that he was divorced. Mr C says that Aviva told him his annuity would be processed within the next 10 days. Mr C called Aviva on 5 January as his annuity was not yet in payment. Aviva confirmed that Mr C should have been told that in addition to the 10 days for the processing of his application, a further three weeks should be allowed for the annuity payments to commence. But Mr C says he was told the payments would be backdated to the policy maturity date.*

*On 18 January Aviva confirmed to Mr C that his annuity payments had started. But it told him that it would be using the date it received his application – 14 December – as the start date. So it only made two monthly back payments rather than the three that Mr C thought he was entitled to receive. So Mr C complained to Aviva about what had happened.*

*Aviva told Mr C that it was unable to start his annuity payments until it had received his application. But it accepted that some of the information it had given him about the time it would take to set up the annuity was incorrect. So it paid Mr C £100 for the inconvenience he'd been caused. Unhappy with that outcome Mr C brought his complaint to us.*

*I don't think there is much dispute about the basic facts of this complaint. Mr C reached the retirement age on his pension plan in November 2022. But the paperwork he needed to complete in order to put those pension benefits into payment wasn't signed by Mr C until 5 December, and not received by Aviva until 14 December. What I need to decide in order to resolve this complaint is what date it would have been reasonable for Aviva to use as the start date of the payment of Mr C's pension income.*

*Before I consider that matter further, it would be helpful to deal with what happened after Mr C's application had been sent to Aviva. It is clear, and accepted by Aviva, that the information Mr C was initially given by telephone about the time it would take for his benefits to start to be paid was incorrect. But, although I accept the additional time the payment took would have been disappointing for Mr C, I cannot see it has any material impact on when the annuity should have commenced. I think the compensation Aviva has already paid to Mr C, for the incorrect start date information he was given, is fair in the circumstances.*

*So I now turn to what would be a reasonable start date for the payment of Mr C's pension benefits.*

*Mr C's pension benefits had a valuable guarantee. Aviva had committed to pay Mr C a GMP when he reached 65 years of age. The pension savings that he held with Aviva were insufficient in themselves to fund an annuity equal to the GMP. So, following the point he turned 65, Aviva would need to enhance the value of the pension savings in order for the correct annuity to be provided to Mr C.*

*But, and I think importantly here, that wasn't a one-off offer. Mr C was able to defer taking his GMP benefits past the date of his 65th birthday. And Aviva would increase the value of the GMP at a rate of around 1% for every seven weeks that Mr C deferred taking his benefits. It seems clear that was something Mr C, or at the very least his financial advisor, had considered in the lead up to November 2022 as it was information that was requested of Aviva and relayed by the financial advisor to Mr C.*

*Aviva sent the paperwork that Mr C would need to complete, in order for his annuity to be put into payment, in September 2022 – around two months before Mr C's retirement date. So I think he had ample time to provide his instructions to Aviva so that his annuity could start on the date of his 65th birthday. But, as I've mentioned earlier, Mr C didn't return those forms until nearly a month later. Whilst there was no requirement for Mr C to return the forms immediately, I haven't seen any reason why it might have been necessary for him to delay their completion.*

*So the only conclusion I think Aviva could reasonably reach was that Mr C had chosen, for whatever reason, to not take his annuity immediately. He wasn't required to give any instruction to that effect to Aviva, and Aviva had already written to Mr C to make him aware that the only deadline he faced in taking his pension benefits was at his 75th birthday.*

*I don't think it reasonable that a consumer should be able to give a retrospective instruction for the payment of pension benefits. That could conceivably give rise to some difficult situations where falls in the value of pension investments have occurred, and with the benefit of hindsight, consumers might seek to negate those falls by asking for pension benefits to be paid at an earlier date. I am not in any way suggesting that is what happened here, but I think the outcome proposed by our investigator might open the door for similar difficulties in future should I ask Aviva to adopt that approach.*

*Instead I think the approach taken by Aviva is fair. Until it receives notification from a consumer that they wish to put their pension benefits into payment, that process cannot start. Here, Mr C's application was received by Aviva on 14 December, and so that was the date that was used for the start of his annuity. I think that approach is entirely fair, and ensures that all customers are treated equally based on when they communicate their intentions to the firm.*

*I have considered that Mr C says no deadline was provided by Aviva for the return of his application form. I accept that was the case. But as I have explained above, Aviva's responsibility for paying the GMP didn't simply cease when it didn't receive Mr C's instruction by his 65th birthday – had that been the case I think a deadline would have been essential. The GMP responsibility continued, with the stated increases to the GMP amount, for at least another ten years. So I don't think it was necessary for Aviva to place a deadline on any response from Mr C. He would have been perfectly entitled to complete the paperwork when he thought it appropriate to commence payment of the annuity.*

*So I think it fair and reasonable that Aviva has used the date it received Mr C's application as the start date for the annuity. I appreciate that it was then a number of weeks before the first payment was made to Mr C. But I don't think the time Aviva took was excessive or unreasonable. It is entirely usual for a short delay to occur before payments commence to allow firms to make the necessary checks both internally, and to fulfil their regulatory responsibilities. And the delay didn't cause Mr C to lose out on any annuity payments as Aviva backdated the payments made to Mr C to the start of his annuity.*

*I appreciate that my decision will be disappointing for Mr C, but I don't currently think it would be fair to expect Aviva to backdate the annuity start date to his 65th birthday. I think the start date was correctly set as the date Mr C's application forms were received by Aviva.*

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Aviva hasn't provided us with anything further. Mr C says that he doesn't agree with my provisional decision. Although I am only summarising here what Mr C has said, I want to reassure him that I have read, and carefully considered, his entire response.

Mr C says that no account has been taken of some health problems that he was experiencing at the time. He says that the application form he was sent by Aviva included only a second class returns envelope. He says the delays caused by the extended delivery

times have not been accounted for when looking at how long it took Aviva to set up his annuity. He says Aviva had no need to ask for information about his spouse – he says that information was provided in his original application. And Mr C says that he has not received any reasonable explanation why final bonuses were not added to his pension investments.

Mr C says that I should not be concerned by any precedents my decision might set for Aviva. He says his complaint should be judged on its own merits. He reiterates that he is seeking compensation equal to one month's pension income.

### **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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr C and by Aviva. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I think I should first touch on the issue of the additional of a final bonus to Mr C's pension savings. This hasn't previously formed part of Mr C's complaint, and so it isn't something that I should reasonably deal with here. And the information that I have on the value of the pension savings is limited. But, as I explained in my provisional decision, the pension savings that Mr C held with Aviva were insufficient in themselves to fund an annuity equal to the GMP. So, following the point he turned 65, Aviva needed to enhance the value of the pension savings in order for the correct annuity to be provided to Mr C.

Aviva provided the application pack to Mr C around two months before his 65<sup>th</sup> birthday. As I said in my provisional decision I've not been made aware of any reasons why Mr C could not have completed his application before that date. I have noted that he said he had some health problems at that time. But he hasn't provided any further details about the extent of those problems and why they meant he couldn't return the forms. I think the length of time that was available for the application to be made negates any argument about the inclusion of just a second class reply envelope. I think that there was more than sufficient time for a response to be sent to, and received by, Aviva.

Aviva started Mr C's annuity on the date it received his application. So any delays caused by its enquiries about Mr C's spouse, or other administrative actions, had no impact on the date the annuity started.

Mr C is entirely correct that I should assess each complaint on its own merits. But I am also mindful that the regulator's rules require businesses to take account of past ombudsman decisions when dealing with future complaints and designing business processes. My decision has been reached because of what I think is fair and reasonable in the specific circumstances here. But I equally think what I am saying provides Aviva with an appropriate way of dealing with the setting up of annuities and with future complaints of this nature.

So for the reasons given in my provisional decision, and above, I remain of the opinion that it would not be fair to expect Aviva to backdate the annuity start date to Mr C's 65th birthday. I think the start date was correctly set as the date Mr C's application forms were received by Aviva.

### **My final decision**

For the reasons given above, I don't uphold the complaint or make any award against Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 17 April 2024.

Paul Reilly  
**Ombudsman**