

## The complaint

Mr W complains that Aviva Life & Pensions UK Limited (Aviva) failed to communicate valuable guarantees attached to his pension plan in a timely manner. He thinks this has led to a financial loss.

## What happened

Mr W had a pension plan since June 1986 with a business which is now part of Aviva. I understand this had an original retirement age of 65 in 2017, and a normal retirement age of 70 in 2022. The plan was partly invested in Unit Linked Funds, and partly in a With-Profits Fund.

The plan had an optional benefit which allowed policyholders to access beneficial Guaranteed Annuity Rates (GAR) at retirement using any of the funds held in a With-Profits Fund. To do this, policyholders had to switch at least five years before their normal retirement date. So Mr W would've had to move his non-With-Profits funds into With-Profits funds in 2012, and then keep them there, if he wanted to fully benefit from the GAR.

In 2017, Mr W was considering his pensions options with advice from his Independent Financial Adviser (IFA). Aviva provided information based on a retirement date in 2017. Mr W's IFA then used this and other information provided at the time as the basis for her advice. I understand that Mr W's objectives at that time were to be able to access income from his funds when he required. And that he was satisfied that his state pension would meet his fixed income needs in retirement.

Mr W's IFA produced a report on his options dated 14 September 2017. The report noted that GARs were available on part of his pension, but questioned whether an annuity purchase was right for him. The report stated: *"...if you like the idea of the flexibility of taking income at any time but also want some investment potential on your fund, as opposed to the Guaranteed Maturity value, then income drawdown may suit you."*

On 8 January 2018, Mr W's IFA wrote to Aviva to confirm her advice to Mr W was to transfer. And that he was aware of the GARs but wanted to transfer anyway to pursue an income drawdown approach. Mr W accepted the advice and transferred his pension plan to provider P.

Aviva wrote to Mr W in March 2021 about his pension plan. It noted that he hadn't taken advantage of the optional benefit. Aviva said it had failed to communicate the potentially valuable option to access GARs to some customers. And wanted to put that right.

Aviva arranged an assessment which took place on 6 May 2021. After the assessment, Aviva wrote to Mr W in May 2021 to tell him it didn't think he was due any redress as his retirement objectives couldn't have been met by switching funds to access the GARs.

Mr W complained to Aviva on 24 May 2021 as he didn't think it'd provided him with enough information about how it'd reached its decision. He asked for it to put the figures in writing. He also complained about the lack of information and communication about the valuable

option. Mr W's IFA also got involved in his complaint.

During a call with Mr W on 4 June 2021, Aviva said that the reason it didn't think he was due any redress was because he'd wanted to flexibly access his pension funds using drawdown. And this wouldn't have been available with the GAR option. It also said that Mr W had been part invested in the With-Profits fund and that he'd therefore decided to transfer his pension despite knowing about the GAR option.

Aviva re-confirmed in its 8 October 2021 response to Mr W's IFA the reasons it didn't think Mr W was due any redress. It said that as he'd been part invested in the With-Profits fund, it'd provided documentation dated 28 June 2017 and 7 September 2017 which had referenced that he was entitled to a GAR on that element of his pension fund. It also said that a document dated 8 January 2018, signed by the IFA, confirmed that she was aware of the GAR and that Mr W had been happy to proceed with the transfer and give up the GAR.

Mr W's IFA wrote to Aviva again on 1 November 2021. She felt that if Aviva had provided the correct GAR figures before she'd advised Mr W on the transfer it may have affected her advice. She didn't think it was fair for Aviva to refer to Mr W's objectives in hindsight, given he didn't have the correct GAR figures at the time he'd decided to transfer out. She wanted to know what the correct GAR figures would've been as she felt this could've impacted Mr W's decisions and outcomes. She asked Aviva to provide figures for the GAR assuming Mr W had switched all of his funds into With-Profits five years before retirement.

Aviva wrote to Mr W again on 20 April 2022. It apologised for its oversight in not replying to his IFA's November 2021 email. And offered Mr W £250 compensation to recognise the inconvenience this had caused. Aviva then provided a further explanation for why it didn't consider Mr W had lost out.

Mr W's IFA said Aviva still hadn't provided the detailed figures she'd requested in her November 2021 letter. She said that although she'd been aware of the GAR being available on part of Mr W's funds, Aviva hadn't told her or Mr W that his remaining funds could be switched to With-Profits and then also used to secure a higher GAR. She felt that the only way to reassure Mr W that he hadn't lost out was to calculate what the GAR would've been if all of his pension fund had been invested in the With-Profits fund.

Aviva then calculated that if its original quote had been based on all of Mr W's funds being switched to With-Profits five years beforehand and then remained there until exit, he would've been quoted an annuity that was between £69 and £93 per month higher than it had previously quoted, with the range depending on whether Mr W was intending to take tax free cash.

Mr W's IFA felt that these calculations showed that Mr W had been seriously financially disadvantaged because of Aviva's communication failure. She acknowledged that Mr W preferred flexibility and choice on his pension, but was unsure whether he would've chosen a different option in 2018 if he'd had the correct information at the relevant time. She wanted to know how Aviva intended to compensate Mr W.

Mr W's IFA also noted that the rates Aviva had quoted would need to be adjusted as it was vital that Mr W obtained a 100% joint life pension. She asked Aviva to recalculate the joint life annuity that would've been available using the GAR if Mr W had been fully invested in With-Profits, so that this could be used to assess compensation.

Aviva made an initial offer to Mr W, noting he was yet to access his pension benefits from provider P. It wanted to offer him the opportunity to transfer that part of the pension he'd transferred which hadn't been invested in With-Profits back into his original pension, so that

he could access the GAR at his future retirement date. It said it didn't extend this offer to the With-Profits part of Mr W's pension as he'd knowingly given up the GAR relating to that part.

Aviva acknowledged that Mr W would need to consider this option carefully, so it offered to pay reasonable advice costs up to a maximum of £2,000 plus VAT. It also offered him a further £500 compensation as a gesture of goodwill to recognise the inconvenience it had caused him.

Mr W's IFA didn't think that this offer was fair. She felt that Mr W had transferred to provider P on the basis of the information Aviva had provided on the GAR at that time. And that this information hadn't been correct. Therefore she felt that Mr W might've made a completely different decision on his entire pension if he'd had the correct information.

Aviva then amended its offer to allow Mr W to transfer the full amount, including funds relating to the previous With-Profits component. It said it would write to Mr W to let him know the maximum amount he could transfer back.

Aviva then wrote to Mr W on 14 June 2022 with details of its offer. It said it would accept a transfer payment back from provider P of up to £97,771.98. And that Mr W would then have the option to select an annuity income at any time up to age 75 using the same GARs as were available previously. It also agreed to pay Mr W's IFA up to £2,000 plus VAT for the advice Mr W would need to make his decision.

Mr W's IFA invoiced Aviva for £2,000 on 21 July 2022. And Aviva paid this shortly afterwards.

Mr W's IFA asked Aviva for the specific information she needed so that she could advise Mr W on 21 July 2022. She chased it for the figures on 13 September 2022.

Aviva sent some information on 15 September 2022. But it wasn't the information the IFA had requested. It also said it had sent Mr W the £500 compensation it'd offered.

Mr W's IFA complained to Aviva on 29 September 2022 that she hadn't yet received the information she'd requested. She again specified what she needed and why.

Aviva sent the requested information on 18 October 2022. This stated that based on a fund of £100,128.28 as at 5 October 2022, Mr W could expect to receive an annual 100% joint life level annuity using the GAR of £7,459.56. And that the equivalent annual single life level annuity would be £11,084.20.

I understand that Mr W's IFA provided him with the advice he needed on 8 November 2022. She provided him with a comparison of the benefits he could receive if he transferred back to Aviva in line with its offer and the benefits he might receive if he stayed with provider P.

Mr W wrote to Aviva on 29 January 2023 to say that he hadn't cashed the £500 cheque it had sent because he felt it was an insult when considering the stress he felt it had caused him for almost two years. He felt he'd been financially disadvantaged because of Aviva's negligence. He said that if he'd had the opportunity to take out an annuity based on the GAR in 2017, he would've already received £55,420 from a single life annuity or £37,295 from a joint life annuity.

Mr W said that he'd decided not to transfer his pension back to Aviva because of its lack of communication and incompetence. But he felt that if he'd been given the correct information in 2017 he would've almost certainly taken the annuity. Mr W said he hadn't felt able to access his pension with provider P because of the confusion Aviva had caused. He also said

that the matter had caused him considerable stress and anxiety, so he wanted Aviva to offer him substantial and appropriate compensation.

Aviva replied to Mr W on 14 February 2023 to tell him that it felt its offer was fair.

Unhappy, Mr W brought his complaint to this service in March 2023. He said he'd decided not to take Aviva's offer because it wouldn't give him the option to go back five years as he felt should've happened. He also felt that the distress and inconvenience compensation Aviva had offered him didn't make up for the dreadful experience. He also told this service that he'd had to use his cash savings as he felt he couldn't touch his pension.

Our investigator felt that Aviva's settlement offer, including the total of £750 it had offered to pay Mr W for the distress and inconvenience it had caused him, was fair. He acknowledged that it wasn't possible to come to a definitive conclusion about what would've happened if Aviva had communicated better with Mr W. But felt it was more likely than not that if Mr W had been aware before his 60<sup>th</sup> birthday in 2012 that he had the option to switch those funds which weren't currently invested in With-Profits into With-Profits so that he had the option of accessing the GARs on all his funds, he would've done so.

Our investigator said it was more difficult to determine whether or not Mr W would've still transferred to provider P in 2018 if he'd had all the correct information and all his funds were eligible for GARs. He acknowledged that Mr W had said that he would "*almost certainly*" have taken the annuity, but he didn't think this was definitive. He said that it could be argued that, given Mr W's objective in 2017 was to be able to access his pension savings in a flexible way, a transfer would've still been the most suitable outcome, regardless of the level of GAR. He also noted that Mr W had known that GARs were available on at least part of his pension.

Our investigator felt that Mr W had no need to access any lump sums or income at the time of the advice. So he could've stayed with Aviva until he needed lump sums or income and when GARs would've been available in the future. But that he'd instead chosen to transfer to provider P. He therefore didn't think it was certain that Mr W wouldn't have transferred if Aviva had provided full information about GARS. He also noted that Mr W had yet to take any lump sums or income from provider P. He acknowledged that this may have been caused in part by the uncertainty Aviva's March 2021 had caused. But felt that there'd been more than three years between the transfer and that letter during which Mr W hadn't needed to access his pension funds. He therefore felt that he couldn't reasonably ask Aviva to pay Mr W annuity arrears back to 2017 for an annuity he might not have taken.

Our investigator concluded that if the correct information about GARs had been provided before Mr W transferred, it wasn't certain that he would've chosen to buy an annuity immediately. He may have decided to leave funds invested with Aviva until benefits were needed. He felt that Aviva's settlement offer did, as far as possible, return Mr W to the position he would've been in if it hadn't failed to fully communicate the options.

Mr W didn't agree with our investigator. He still felt that he couldn't reasonably be asked to make a decision on whether to stay with Aviva and take an annuity without having the correct figures. And as his IFA wasn't given the correct figures in 2017/2018, he didn't know the benefit that the GAR would've provided then. He felt he should've been given the correct information to make the correct decision to ensure that he had the best possible income.

Mr W said he hadn't initially accessed his pension because he was using savings. He felt that if he'd taken the annuity he wouldn't have used his savings. He also said that after he'd received Aviva's letter he'd endured several years of utter confusion as to what was happening to his pension. He felt Aviva's communication with his IFA was extremely poor

and very protracted. Mr W wanted Aviva to compensate him for the six years when he didn't take the annuity.

Our investigator acknowledged that we couldn't be certain what Mr W would've done if Aviva had correctly explained the guarantees. Therefore we needed to make certain assumptions about what we think might've happened. Having done this, and considered Mr W's points, he still felt Aviva's offer was fair.

Mr W felt that although Aviva had conceded that it was at fault, it hadn't offered him suitable compensation.

As agreement couldn't be reached, the complaint has come to me for a review.

### **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 agree with our investigator that the compensation Aviva has offered Mr W for its failure to communicate and for the distress and inconvenience this has caused is fair under the circumstances of this complaint. I know this will be disappointing to Mr W. I'll explain the reasons for my decision.

Where a business has made an offer to settle a complaint – as Aviva has done – what I have to decide is whether, in all the circumstances, that offer is fair and reasonable.

In this case, Aviva has acknowledged that it didn't provide Mr W with all the information he needed about his GAR. It apologised and reviewed his circumstances to see if he had lost out, and initially concluded that he hadn't. Aviva felt that the evidence showed that Mr W hadn't been looking for a fixed level of income in retirement from his pension. And that he was aware of the GAR at the point of transfer, but was still happy to proceed to transfer in order to meet his wider retirement-based objectives.

After Mr W and his IFA challenged Aviva's initial assessment, Aviva offered Mr W the opportunity to transfer the amount his pension would've been worth had he not transferred back into his original pension, so that he could access the GAR at his future retirement date. It also said it would pay up to £2,000 plus VAT for Mr W to take advice on his options. And sent Mr W £500 compensation as a gesture of goodwill to recognise the inconvenience it had caused him. Aviva had already sent Mr W a £250 cheque in recognition of its delayed response to his IFA's November 2021 letter.

I first considered whether the settlement offer is fair.

#### *Is the settlement offer fair?*

Mr W felt that if he'd taken the annuity he wouldn't have used his savings. He wanted Aviva to compensate him for the six years when he didn't take the annuity.

While I acknowledge that Mr W feels strongly that he's missed out on the annuity payments from age 65 to 71, I'm not satisfied that he would've taken an annuity at age 65 if he'd had all of the information about the GARs.

I agree with our investigator that it's likely that Mr W would've moved all of his investments to With-Profits if he'd known about the GAR option in time. I say this because I'm satisfied that he would've felt that the benefit from the GARs outweighed any potential lower future

investment returns from the With-Profits fund. Therefore I consider that it was more likely than not that in 2017, at the time of the advice to transfer, Mr W would've been fully invested in With-Profits and therefore his entire fund would've been eligible for GARs.

I also agree with our investigator that it's more difficult to determine whether or not Mr W would've still transferred to provider P in 2018 if he'd had all the correct information. But like him, I've concluded that it would've been unlikely that Mr W would've chosen to buy an annuity immediately.

I acknowledge that we can't be certain what Mr W would've done. However, he didn't need any income from his pension at that time. He's confirmed that he's taken no tax free cash or lump sums from his flexi-access drawdown account since the 2018 transfer. And, as our investigator noted, annuity rates get better as a policyholder gets older. So it can be beneficial for a person who doesn't need the income from an annuity yet to wait and only commit to buying an annuity at the point that they really need the income. And as buying an annuity commits that money forever, delaying such a purchase allows a person to keep their options open for longer.

So while I appreciate that Mr W has instead used his savings to live on, I'm not persuaded that this alters the fact that he didn't need income from this pension at 65. Therefore I'm of the view that it's more likely that Mr W would've decided to stay with Aviva and defer his decision on whether to take an annuity or not until he needed some income from his pension.

I acknowledge that Mr W said he didn't feel he could access his pension with provider P under the uncertainty of this complaint. But I agree with our investigator that this couldn't have been the reason for Mr W choosing not to access any income from his pension between 2018 and March 2021, when Aviva first informed him of the issue. So I'm more persuaded that Mr W hasn't accessed his pension because he didn't need to.

This service aims to ensure that consumers are put back as close as possible into the position they would've been in but for a business's error. Based on what I've seen, Aviva's offer takes reasonable steps to do that.

I say this because I'm persuaded that if Mr W had been given full and accurate information on time, he would've changed his investments into With-Profits by age 65. And then he would've deferred his decision on taking an income from his pension until he needed the money. As he's yet to take any income from his pension, I'm not persuaded that Mr W has missed out on any annuity payments.

I say this because I think Aviva's settlement offer puts Mr W as close as possible to the position he would've been in but for its mistake. I think it would put him back into the position he would most likely have been in if he had been given all relevant information at the right time, that is, invested in the With-Profits fund with Aviva and waiting to decide whether to take an annuity based on GARs at the point that he wanted to take income from his pension, or to transfer to provider P.

I agree with our investigator and Mr W's IFA that it's not clear what Mr W would've done if he'd been given correct information on time. As I've noted above, I think it's most likely he would've left his pension with the GAR still in force. But he might've still decided to transfer his pension to provider P, given his objectives.

I appreciate that Mr W doesn't think that Aviva's offer is suitable. I acknowledge that he's decided not to take up Aviva's offer to transfer his pension funds back to it so that he could benefit from the GARs at the point he wanted to take a pension income. But his decision not

to take up the offer doesn't mean that it isn't fair.

I say this because, as I've noted above, had there not been a failure to communicate the information, Mr W might still have decided to transfer his pension to provider P. From what I've seen, Aviva paid for the advice Mr W needed to assess whether he should take its settlement offer or stay with provider P. And after receiving that advice, Mr W decided to stay with provider P. Therefore I can't reasonably say that Mr W has lost out financially because of Aviva's error. I consider that Aviva's settlement offer meets the aim of establishing if Mr W's circumstances would've changed if its communications had made him better aware of his options on time.

I next considered whether the amount Aviva has offered Mr W for the distress and inconvenience it has caused him is reasonable under the circumstances.

*Is the distress and inconvenience compensation Aviva has offered fair?*

From what I've seen, Aviva offered Mr W £250 for the distress caused by its delayed response to his IFA's letter. And £500 for the overall distress and inconvenience caused.

Mr W said that the distress and inconvenience compensation Aviva had offered him didn't make up for the dreadful experience over almost two years. And that he'd been extremely stressed and anxious that he might have made the wrong choice because of the lack of information supplied by Aviva at the appropriate time.

I'm sorry that this issue has caused Mr W so much stress over such a long period. But the total compensation Aviva has offered for the distress caused is broadly in line with what I would've otherwise recommended. Therefore I'm satisfied that Aviva's offer is fair.

I understand that Mr W hasn't cashed the £500 cheque Aviva sent him. I'm unsure about whether or not he has cashed the £250 cheque also sent. But I would expect Aviva to honour both cheques if Mr W decides he'd like to accept them.

As I can see that Aviva made its settlement offer before Mr W brought his complaint to this service, I don't uphold the complaint, as I don't consider that Aviva needs to improve its settlement offer.

### **My final decision**

For the reasons set out above, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 May 2024.

Jo Occleshaw  
**Ombudsman**