

The complaint

Mr M has complained that Aviva Life & Pensions UK Limited failed to clarify his instructions when setting up an annuity with a guaranteed annuity rate (GAR) with his pension fund, which in turn led to reduction in the terminal bonus applied and has also resulted in payments being made at the beginning of the month rather than the end of the previous month.

What happened

During 2023, Mr M made a number of enquiries to Aviva about the options available to him to take the benefits from his Aviva Executive Pension Plan (EPP).

Following correspondence which Mr M received from Aviva dated 28 November 2023, he completed the necessary forms required to set up a lifetime annuity with it, which included a GAR.

Mr M sent his annuity application form with a covering letter to Aviva on 4 December 2023, requesting that his annuity begin in January 2024.

On 8 December 2023, Aviva confirmed receipt of Mr M's instructions to take the benefits of his policy and confirmed the selected retirement date as 1 January 2024.

On 5 January 2024, Aviva sent Mr M a letter entitled "Retirement" confirming that it had carried out his instructions and provided details of the purchase price and resulting annual pension.

In a telephone call on 8 January 2024, Mr M complained to Aviva that the amount used to buy his annuity was less than he'd been advised in previous illustrations he'd requested as well as the fund value he'd been quoted in a statement sent on 31 December 2023.

On 28 February 2024, Aviva sent its final response to Mr M's complaint advising him that it was declining to uphold it, and explained why Mr M's fund value had reduced in value during the process of his request to take an annuity. It also said that Mr M had been clear in his instruction to take his pension benefits on 1 January 2024, which is what happened.

Unhappy with Aviva's response, Mr M referred his complaint to this service on 28 February 2024 for review.

Having considered the matter, our investigator didn't think that the complaint should be upheld. He said the following in summary:

- From correspondence that Aviva had sent to Mr M, beginning with the "Pension Projection" document it had sent in February 2023 and then the annuity quotes produced in November 2023, and finally the letter entitled "It's time to check on your pension" issued in December 2023, it had routinely quoted the fund value as being between £103,465 and £103,980.

- But in those documents, the fund value quoted had been caveated with statements that it wasn't guaranteed.
- Aviva undertook a review of the final bonus applicable on with profits policies at least twice per year and the final bonus could therefore be altered. Unfortunately, in this instance, it was changed just before Mr M started to take his pension benefits.
- Although Mr M had said that, given that the bonus reduction was applied on 1 January 2024, Aviva should have been aware of this and contacted him, it wasn't obliged to do so.
- It was unfortunate that the bonus rate changed when it did, but under different circumstances, it may have remained the same, or even increased.
- In terms of what Mr M had said about the discrepancy between what he'd indicated on the annuity application form and what he'd said in the covering letter which accompanied the form, although Mr M had entered 1 January 2024 as the date which he wished to take his pension benefits, his covering letter had made it clear that he wanted his annuity to commence in January 2024. Mr M had in fact expressed concern as to whether he'd given Aviva enough time to start payments by the end of January 2024.
- But the investigator didn't in any case think that Aviva needed to contact Mr M about this discrepancy, especially as it had acknowledged receipt Mr M's application and had no issues in setting up the annuity as Mr M had instructed – which it did on 5 January 2024.

Mr M disagreed, however, saying the following in summary:

- The crux of his complaint was as follows: the covering letter with his application requested payments to start at the end of January 2024; the form had requested that the annuity be paid a month in arrears, but he'd entered a start date of 4 January 2024 instead of at the end of December 2023; his first payment arrived on 1 February 2024 instead of the end of January 2024, and subsequent payments had been made on the first of each month; Aviva should have picked up on the discrepancy between his letter dated 4 December 2023 and the form, and it should have sought clarity from him, but it failed to do so.
- The letter which accompanied his annuity application said the following:

"Can you also advise if this is sufficient time to setup and for payment to commence at the end of Jan 2024 please?"
- However, payments didn't start at the end of January 2024 as requested. Had Aviva raised the discrepancy with him, he would have adjusted the start date on the form to sometime in the last week of December 2023, and this would as a consequence have avoided the reduction in the bonus applied on 1 January 2024.

The investigator wasn't persuaded to change his view, however, saying that the application form had requested a start date of 4 January 2024 and that payments be made a month in arrears. The annuity was then set up on 5 January 2024 with the first payment being made on 1 February 2024.

Mr M had expressed concern about there not being enough time for the annuity to be set up and for the first payment to be made at the end of January 2024. But the discrepancy between a requested start date of 4 January 2024 and a request to start making the payments at the end of January 2024 wouldn't reasonably have prompted Aviva to revert to Mr M for clarification.

Further, Mr M had in any case been unspecific in his requested date of payment – this being for the “end of January”. It wasn't therefore unreasonable for Aviva to have begun payments around that time, which translated into 1 February 2024.

Mr M disagreed, however, saying that when he requested that the annuity be paid a month in arrears with the first payment at the end of January, Aviva should have contacted him to say that the start date of the annuity would need to be at the end of December 2023 to achieve this.

As a consequence, he was receiving payments at the beginning of the month instead of the end of the previous month, which was causing some significant financial inconvenience each month.

And a by-product of this failure was that the bonus on his pension fund was reduced, Mr M added.

As agreement couldn't be reached on the matter, it was referred to me for review.

I issued a provisional decision on the complaint on 23 July 2024, in which I set out my reasons for upholding it. The following is an extract from that decision.

“I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

And having done so, I've reached a different overall conclusion to the investigator.

The key issue here is whether Aviva acted reasonably in setting up the annuity as it did, given the information it had.

Mr M returned his completed annuity form, in which he'd specified that he wished his retirement date to be 4 January 2024, and the covering letter said the following:

“I am looking to purchase an annuity from you commencing in January 2024... I would like to proceed on the basis detailed below:

*To be paid monthly in arrears
5 years guarantee period
Level term (i.e. payments will not increase)*

Can you also advise if this is sufficient time to setup and for payments to commence at the end of Jan 2024 please?”

When Aviva received Mr M's completed Retirement Benefit documents, it acknowledged this, including the following information:

“We will begin processing your benefits on your selected retirement date of 1 January 2024 and would expect to complete payment within three to five working days following this.”

I agree that, ordinarily, the discrepancy between wanting an annuity to start on 4 January

2024 and wanting actual payments to begin at the end of January 2024 might not be so great as to reasonably require Aviva to query this with Mr M.

Aviva is under an obligation to process annuity requests swiftly and so, on the face of it, I don't think it setting up the policy on 5 January 2024 and making the first payment on 1 February 2024 – which was very close to the end of January 2024, would necessarily have been unreasonable.

But Mr M did also make a very specific query, and one which is consistent with what he's said about the difficulties he's encountered by the annuity payment being made at the beginning of the following month rather than at the end of the month. He asked Aviva to confirm that it would have enough time to process the annuity and for payments to begin at the end of January 2024.

Had Aviva responded to this, the answer, as I understand it, would have been "no" on the basis of the annuity being processed and put in place in January 2024. Any payment made one month in arrears after this would have been in February 2024, rather than at the end of January 2024. Although if my understanding of this is incorrect, and payment could have been made at the end of January 2024 even with a processing date at the beginning of the same month, Aviva should let me know in response to this provisional decision.

I think that Mr M would then more likely than not have reasonably enquired as to what needed to happen for the first payment to actually be received at the end of January 2024. To which Aviva would reasonably have responded that the annuity would need to be set up in December 2023, which would seem to have been possible, given that the application was sent in at the beginning of December 2023. Again, if my understanding of this is incorrect, Aviva should let me know.

Had the annuity been processed at the end of December 2023 – and I think the effective date would have needed to be 29 December 2023 as 31 December 2023 fell on a Sunday - not only would Mr M have had the first payment at the end of January 2024 as he'd requested, but the annuity would have been set up before the review of the terminal bonus.

So I'm currently inclined to agree with Mr M that, had his specific query about the payments beginning at the end of January 2024 been answered, he would have received the first payment sooner and this would likely have been based upon a higher fund value.

Putting things right

My aim is to place Mr M, as closely as possible, in the position he would otherwise have been, had the annuity been processed so that the first payment began at the end of January 2024.

And so, on the basis that my decision remains unchanged, Aviva Life & Pensions UK Limited should reconstruct Mr M's annuity on the basis that it would have been processed as the end of December 2023 – as I've said above, logically I've assumed this to be 29 December 2023.

If this would have provided Mr M with a higher annuity, then Aviva Life & Pensions UK Limited should pay this to him in the future, and future payments should be made at the end of the preceding month. Aviva Life & Pensions UK Limited should also pay to Mr M any lost difference in past annuity payments, with the addition of 8% pa simple interest from the date that each would have been due (likely 29th of each month, or 28th for February 2024) up to the date of settlement."

Neither party has submitted any further comments in response.

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 no further comments have been received, my conclusions remain as set out in the provisional decision, and for the same reasons.

Putting things right

As with the provisional decision, my aim is to place Mr M, as closely as possible, in the position he would otherwise have been, had the annuity been processed so that the first payment began at the end of January 2024.

And so Aviva Life & Pensions UK Limited should reconstruct Mr M's annuity on the basis that it would have been processed as the end of December 2023 – as I've said above, logically I've assumed this to be 29 December 2023.

If this would have provided Mr M with a higher annuity, then Aviva Life & Pensions UK Limited should pay this to him in the future, and future payments should be made at the end of the preceding month.

Aviva Life & Pensions UK Limited should also pay to Mr M any lost difference in past annuity payments, with the addition of 8% pa simple interest from the date that each would have been due (likely 29th of each month) up to the date of settlement.

My final decision

My final decision is that I uphold the complaint and direct Aviva Life & Pensions UK Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 September 2024.

Philip Miller
Ombudsman