

The complaint

Mr H complains that Aviva Life and Pensions UK Limited ("Aviva") caused delays in setting up his annuity and did not allow him to exercise his 30 day cooling off period when he set up his annuity. He says that he now has a plan that does not meet his requirements.

What happened

Mr H held a pension with Aviva. In February 2024 he started the process of accessing his pension benefits, and his financial adviser contacted Aviva to obtain annuity quotes. Following a number of months of correspondence between the adviser and Aviva, final quotes were sent to Mr H on 12 June 2024. He returned the annuity forms on 20 June 2024. On 3 July 2024 Aviva completed a call with Mr H confirming the risk warnings and during that discussion, he confirmed the basis of the annuity he required, in line with the forms he had returned to Aviva.

A letter confirming the details of the annuity was sent to Mr H on 6 August 2024 which advised him that he had 30 days from the date he received the letter to change his mind. On 13 August, Mr H contacted Aviva and told them he wanted to cancel the annuity. He subsequently emailed them on 20 and 21 August 2024 stating he wanted to set up an annuity on a different basis, which included not wishing to take his tax free cash.

Aviva incorrectly told him that he was not able to cash in or cancel his policy, following which Mr H complained on 10 September 2024. Aviva discussed the matter with Mr H on 19 September 2024 and on 2 October 2024 issued their final response to his complaint. They agreed that they had provided incorrect information and as he had contacted them during his cooling off period they would accept the request to cancel the annuity and set up a new one on different terms. They confirmed that he could retain his Guaranteed Annuity Rates (GAR) however they could not accept back the Tax Free Cash (TFC) paid. Aviva stated that this was due to the payment of the TFC being a crystallisation event and could only be accepted back if Aviva had made an error when setting up the policy (which they had not done). Mr H was concerned that the delays in setting up the annuity at the outset had caused him financial loss. Aviva confirmed in their final response that they agreed that they had caused delays in sending out the annuity quotes to his financial adviser when he was setting up the policy, but stated they could only carry out a loss calculation when the correct policy had been set up. They advised that when this was done, they would consider whether the delays had caused loss. To compensate Mr H for the delays, errors, upset and inconvenience caused, Aviva paid £100 to Mr H. They have also agreed to honour the cooling off period and amend Mr H's annuity should he wish to do so however they have confirmed they will not allow Mr H to return the tax free cash.

Mr H was unhappy with this and referred his complaint to the Financial Ombudsman Service. On 16 January 2025, our investigator provided his view and upheld Mr H's complaint in part. In respect of the tax free cash, he found that Aviva had acted correctly in not allowing Mr H to return his tax free cash, as the documentation issued made it clear that the annuity was separate from the tax free cash, and the cooling off period only applies to the annuity. However, he agreed that Aviva had caused delays in setting up the annuity, and

recommended that in addition to calculating whether the delays caused financial loss in the annuity itself, they should also pay Mr H £300 in respect of the inconvenience caused.

Although Mr H initially accepted the investigator's view, he subsequently responded to confirm that he had not understood that the view meant that he could not return the tax free cash and he did not accept this. Because Mr H did not agree, the complaint has been referred to me for a final 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.

Having done so, I am in agreement with the investigator, and for broadly the same reasons.

Mr H's complaint comprises two elements – the delays in processing his pension withdrawal, and the fact that he could not return the tax free cash and access the entire fund as an annuity as part of his cooling off rights.

Mr H is unhappy because he believes Aviva have acted unfairly by not allowing him to return his tax free cash when he exercised his cooling off period rights provided by his annuity, as he now wishes to purchase an annuity with his whole pension fund rather than taking a lower annuity and a tax free cash.

Aviva sent Mr H a letter on 6 August 2024 confirming payment of his annuity. In this letter they confirmed that the annuity was payable for his lifetime, and stated "*You now have 30 days from the date you receive this letter to let us know if you change your mind. If you cancel your annuity, you will have to repay any monies we've already paid to you.*" In their correspondence to Mr H, Aviva have confirmed that these cooling off rights relate only to the annuity and exclude the tax free cash.

In order to ascertain whether Aviva have acted fairly by applying these cooling off rights only to the annuity element of the transaction, I have taken into account the rules that apply to financial services product providers in relation to cancellation rights. The Financial Conduct Authority ("FCA") mandates a cooling-off period for certain products and services, generally allowing consumers to cancel within a specified period of time without penalty. The specific duration depends on the type of product. By taking his tax free cash and an annuity, Mr H has effected two transactions, a withdrawal from his existing pension by way of the tax free cash, and taken out a new product (the annuity). The FCA Conduct of Business sourcebook (COBS) includes the rules that financial services providers must follow in relation to an individual's right of cancellation at COBS 15.2.1. This outlines the products and associated cancellation period. The rule provides that an individual has the right to cancel a pension annuity within 30 calendar days however, this does not include any such right for withdrawals from a pension.

As they were obliged to do, Aviva made Mr H aware of the 30 day cooling off period that applied to his annuity.

The letter dated 18 July 2024 is entitled "Annuity payment confirmation" and explains that the annuity has been set up, the fund value used to purchase it and the income it would pay. The file indicates that Mr H had engaged the services of a financial adviser, to whom Aviva had sent the annuity quotes prior to Mr H taking his annuity. The timeline of events provided to me by Aviva states that the adviser had requested clarification of the tax free cash entitlement under the policy on 8 May 2024, to which Aviva confirmed that the tax free cash entitlement was the standard 25%. It is reasonable to conclude that Mr H's adviser would

have made him aware of the tax free cash available to him, allowing Mr H time to make an informed decision prior to going ahead with accessing his benefits in the way that he did. I have been provided with an outline of the call that took place between Mr H and Aviva when they explained the risks to him. During this call there is no evidence that cooling off rights were discussed.

The retirement pack sent to Mr H on 12 June 2024 included a number of illustrations, showing the annuities available if he took the tax free cash, and if he did not. They also included options for including an income for his wife. These illustrations showed that if Mr H chose the options to include a 50% annuity for his wife, he would receive an annual income of £3,786.48 and tax free cash of £14,653.38, but if he did not take the tax free cash, the annual income would be £5,048.64. The illustrations clearly stated that Mr H was entitled to a guaranteed annuity rate. I note that this pack does not refer to cooling off rights with the exception of the declaration which states *"I understand I have a total period of 30 days from the date my annuity is set up in which to change my mind."*

I can understand how the documentation issued to Mr H may have caused confusion in relation to the fact that he was carrying out two transactions rather than one, and that the cooling off rights only applied to one part. However, I have considered whether it would have made a difference to Mr H's decision to access his tax free cash alongside purchasing an annuity with his pension fund if Aviva had been clearer in relation to Mr H's cooling off rights. I am not persuaded that it would. As outlined above, the process of accessing his fund took a number of months, during which he engaged with a financial adviser, and directly with Aviva in relation to his options. During this period, it is reasonable to conclude that he had sufficient time to satisfy himself that the options selected were right for him, and would not have proceeded in the way that he did purely because he believed that he could undo the transaction. I have not been provided with any evidence that leads me to believe that Aviva misled Mr H into believing that the cooling off rights applied to the tax free cash element of his pension, or that they have acted unfairly by not allowing him to return the tax free cash. I therefore do not uphold this element of Mr H's complaint.

The second element of Mr H's complaint relates to delays. Aviva have already acknowledged and agreed that they caused delays, and agreed to consider the impact of this when arranging the new annuity. I have reviewed the timeline of events leading to the payment of Mr H's tax free cash and setting up his annuity.

The timeline of events shows that the process began in February 2024, with the first quotes being requested on 11 April 2024, and clarification was sought by Mr H's financial adviser in respect of the guaranteed annuity rates applicable to his pension and the tax free cash. These were sent on 24 April 2024, however as there was an element of confusion relating to the guaranteed annuity rates and tax free cash, further quotes were requested on 13 May 2024 and sent on 12 June 2024. Mr H responded to these by sending his completed forms on 20 June 2024 and following calls to confirm his options, the tax free cash was paid and annuity set up on 6 August 2024.

Although there were a number of delays caused by Aviva in providing the annuity quotes (which I will cover further later), I am aware that following Mr H's financial adviser requesting Open Market Option quotes and annuity quotes (with and without guaranteed annuity rates) on 15 May 2024, they were sent on 22 May 2024 and 12 June 2024 respectively. On 20 June 2024, the completed forms were returned to Aviva and on 1 July 2024 Aviva emailed Mr H's adviser to confirm the transaction. On 3 July 2024, the financial adviser confirmed that Mr H was now dealing with the transaction himself, therefore a call was held with Mr H to go through the risk warnings, and on 10 July 2024, Mr H emailed to confirm that he wished to proceed.

It is unclear why there was a delay in sending out the quotes, which were requested on 11 April 2024 and 15 May 2024, but not sent correctly and in full to Mr H's adviser until 12 June 2024. Following this date, there is no evidence of further delay caused by Aviva. Aviva have agreed that there were delays between Mr H's financial adviser commencing the process of accessing Mr H's retirement funds in February 2024, and state "*we certainly delayed in sending you the annuity quotes*". They went on to confirm that once they had confirmation of the approach that Mr H wanted to take with his annuity, they would calculate any loss at that point.

Having considered this further, in his view, our investigator stated he believed Aviva could reasonably have sent the correct quote by 15 April 2024, rather than 12 June 2024, the date that the correct quote was actually sent, meaning that the annuity would have been set up on or around 21 May 2024. I have reviewed the timeline provided by Aviva, outlining the various communications between themselves, and Mr H or his financial adviser. I can see that the process of obtaining policy information commenced on 16 February 2024 when a letter of authority (LOA) was sent to Aviva for Mr H's adviser to obtain information on his behalf. Following this, the timeline provided by Aviva indicates that there were delays and inconsistencies in the information provided by them, resulting in the final quotes not being provided until 12 June 2024. Although it is fair and reasonable that there would be an element of delay and correspondence when confirming the detail of an individual's pension scheme to ascertain the quotes that would be required and then for them to be issued, I would not have expected this to take the amount of time that it did. I agree with the investigator's view of when the annuity ought to have been set up (21 May 2024).

I uphold this element of Mr H's complaint and ask that when Mr H has advised Aviva of the shape of the annuity he wishes to take, they produce updated quotes with an annuity purchase date of 21 May 2024.

Putting things right

In order to put things right, Aviva should therefore;

- Arrange for Mr H's new annuity to be calculated based on a purchase date of 21 May 2024, on the basis he now selects.
- Using this basis, calculate the net annuity income that would have been generated and the tax free cash sum that would have been paid to date if the annuity had been purchased on 21 May 2024. Any difference between these amounts and the actual amounts paid to date represents Mr H's past loss.
- Aviva should pay to Mr H a lump sum equal to the past loss calculated above, plus interest at 8% per annum simple. I am aware that that Mr H opted to have his annuity paid on a monthly basis, therefore the interest on any losses should be paid from the date that each annuity payment was or should have been made to the date of my final decision. Any loss in respect of the tax free cash should have interest applied from 21 May 2024.
- If HM Revenue & Customs requires Aviva to take off tax from this interest, Aviva must give Mr H a certificate showing how much tax they've taken off if he asks for one.
- Aviva should amend Mr H's annuity going forward with the amount that would have been paid if it had started on the correct date (21 May 2024) and on the new basis selected by Mr H.
- If Aviva is unable to amend the annuity, it should calculate the purchase price needed to buy an annuity equal to the difference between the amount currently being

paid and the correct amount, and pay this amount to Mr H.

- Annuity payments are subject to income tax. Therefore if an additional amount is being paid to Mr H, this should be paid to Mr H minus a deduction equivalent to his highest marginal income tax rate.
- Aviva should pay £300 for the distress and inconvenience caused to Mr H. If they've already paid him the £100 that they originally offered him, they can take that into account and should pay him a further £200.

My final decision

I uphold Mr H's complaint against Aviva Life & Pensions UK Limited and they are to follow the steps outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 25 July 2025.

Joanne Molloy
Ombudsman