

## **The complaint**

Mr T complains that Aviva Life & Pensions UK Limited failed to honour an annuity quotation it had issued to him and he's suffered financial loss as a result.

## **What happened**

Mr T had a Retirement Annuity personal pension policy. The policy was taken out with Norwich Union and is now held with Aviva. So, Aviva is responsible for dealing with this complaint.

In February 2024 Aviva issued a quotation to Mr T and offered him a yearly income of around £19,000 (assuming he didn't take a tax-free lump sum). This quotation was based on the whole of Mr T's pension being used to purchase an annuity using guaranteed annuity rates (GARs). Mr T says that after he accepted the quotation Aviva told him it had made an error. Only part of his pension fund attracted GARs. The revised quotation was for a yearly income of around £15,000 (assuming he didn't take a tax-free lump sum).

Mr T complained to Aviva. It investigated his complaint.

Aviva said it couldn't honour the figures in the retirement quotation it had sent him. But it would make sure he didn't lose out as a result of any delays in the retirement process provided he went ahead with taking his benefits within an agreed timeline.

Aviva explained that Mr T had set up his pension policy in 1987 with initial contributions of £30 per month. He'd confirmed he wanted to increase his contributions by £170 per month in 1998. He'd been sent a letter at that time to explain he wouldn't be entitled to buy an annuity using GARs with the part of his policy which related to the additional contributions. The capital sum which related to the additional contributions could be used to purchase an annuity at Aviva's standard annuity rates.

Aviva said that Mr T had decided to defer his retirement in 2018. It had erroneously told him at that time that if he continued with his contributions of £200 per month the whole amount would qualify for GARs.

Aviva acknowledged it had provided misleading information "since just before" 2018 which had referred to GARs being applied to Mr T's full pension policy. However it said it hadn't given any specific information confirming which part of his fund this related to. It said that if Mr T could provide substantiated evidence he would have invested his contributions differently in 2018, it would take that into account to assess if he'd suffered any financial loss as a result.

Aviva also acknowledged it had sent Mr T retirement quotes in 2022 and 2024 with incorrect figures. Aviva apologised for its mistake. It said it would pay Mr T £1,000 by way of apology.

Mr T did not accept what Aviva said. He referred his complaint to our service.

After the complaint was referred to our service, Aviva offered to increase the compensation it would pay Mr T to £1,500 (in total).

Our investigator looked into Mr T's complaint. She thought Aviva had done enough to tell Mr T that any contribution over the original £30 contribution would not attract the GAR. She referred to the policy terms and to the letter Aviva had sent Mr T in 1998. Although Mr T said he hadn't received this letter, she noted it was sent to the correct address. She said the policy terms were clear that the GAR didn't apply to all the contributions made and she couldn't ask it to apply the GAR to the total contributions as that wouldn't be fair to Aviva or its other policy holders.

She said Aviva had provided misleading information:

- in 2018 when it told him the GAR applied to his continued contributions;
- in February 2022 when it provided an illustration to him; and
- in February 2024 when it provided a quotation to him.

However, our investigator said Mr T hadn't provided evidence to show he would have acted differently in 2018 if he'd been given the correct information. She also noted that all of the contributions into the plan had benefitted from growth. And Mr T could use the funds to purchase an annuity – albeit part of the annuity would be paid using the standard annuity rates.

Overall our investigator thought the mistakes since 2018 didn't mean that the terms of the policy shouldn't be applied. She said Aviva's offer to carry out a loss assessment for any delays setting up the annuity was fair. And she thought Aviva's offer to pay Mr T £1,500 (in total) by way of compensation for distress and inconvenience was fair and reasonable in all the circumstances that applied.

Mr T did not agree. By way of summary he said:

- All correspondence since at least 2001 had referred to GARs being applicable to the policy.
- He'd been careful to ensure that the GAR would be maintained to the additional contributions made since 1998/99. If he'd been told at that time he couldn't increase his contributions (to include GARs) he would've taken out a personal pension instead.
- He was adamant he hadn't received a letter in November 1998. If he had he says he would have taken it seriously. Notwithstanding that, he'd now looked at the letter and the attached endorsement. It referred to clauses in his policy – which did not exist.
- Why was so much weight attached to the letter dated November 1998 rather than the quotations and other correspondence Mr T had received - especially in the period since 2018.
- His financial adviser provided a statement to say that it was his understanding, when Mr T had discussed transferring his policy, that the entire fund would be converted to an annuity using GARs. This was based on Aviva's policy information sheet dated 26 May 2017.

Our investigator considered what Mr T said but she didn't change her view. So the complaint has been passed to me to decide.

### **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.

#### The policy terms and conditions

The policy commencement date was January 1987. The terms provided as follows:

- The policy was an annuity contract approved by the Commissioners of Inland Revenue under s 226 of the Income and Corporation Taxes Act 1970 and could not be altered in any way without their consent.
- The premium was £30 per month – payable until the benefit date (December 2018).
- At the benefit date the capital sum of £19,023 (with compound bonus) would be applied to purchase an annuity in accordance with General Provision 8.
- General Provision 8 stated that the annuity would be purchased either at the rate guaranteed in Table A of the policy or at the current annuity rates – whichever was greater.
- There was no provision permitting premiums to be increased. It was permitted, under General Provision 6, in certain circumstances to pay “a further year’s premium in one sum.”
- It was also permitted to elect to substitute a later benefit date in certain circumstances.

These were the terms which Mr T agreed to when he commenced the policy. I can see Mr T appears to have taken financial advice at the time, from a third party.

I have noted that although there was a provision permitting an additional premium in certain circumstances, there was no provision in the terms which permitted premiums to be increased on a more general or continuing basis. The policy was silent concerning that matter.

#### What happened in 1998?

In 1998 Mr T took further advice. He decided he wanted to increase his pension contributions to £200 per month. I’ve noted he appears to have taken financial advice from a financial adviser at the time.

I’ve looked at the documentation which was issued in 1998 after Aviva agreed that the monthly contributions could be increased from £30 per month to £200 per month. Several documents appear to have been issued at this time:

- *The Acceptance Schedule*  
This document states - “Acceptance dated 30.11.1998” and refers to “Increment” to the existing policy. This document is not referred to as an endorsement. It describes the premium as £170 per month and the benefit is stated as a capital sum of £36,116 (with compound bonus).

This document then states that the capital sum can be used to purchase a pension in accordance with General Condition 6(3) – however no such provision is included in the policy nor with any of the documentation which Aviva has provided to our service. Aviva says it’s possible that the reference to General Condition 6(3) may have been caused because its processor looked at the wrong product specifications at the time.

- *Endorsement Schedule*

This document refers to a monthly premium of £200 and refers to the Benefit as a capital sum of £55,139 (with compound bonus). The benefit is stated as “payable as provided in Schedule.”

I can see that the capital sum referred to on the endorsement was the total of the capital sum on the original schedule (£19,032) and the capital sum set out on the Acceptance Schedule (£36,116).

- *Letter dated 30 November 1998*

Aviva has provided a copy of a letter dated 30 November 1998 which is addressed to Mr T at his correct address. The letter enclosed both the Acceptance Schedule and the Endorsement Schedule. The letter stated:

*“We thank you for your proposal form for an increment to your Retirement Annuity which we have much pleasure in accepting. We confirm receipt of your premium and accordingly the contract has commenced on the currency date shown on the attached acceptance schedule...  
An endorsement schedule is enclosed for attaching to your policy document. Please note that we have reviewed the terms and conditions applying to increments paid to this type of contract. As a result you will not be entitled to buy an annuity using guaranteed rates included in your policy with that part of the capital sum which relates to this increment.”*

Mr T says he did not receive the letter dated 30 November 1998. However, he says his clear recollection is that his focus at the time when he increased his premiums was that the GARs would apply to the whole amount. He has provided a statement from his wife, at the time, (and who had knowledge and expertise in financial matters) which supports his own recollection of the importance he says he attached to the GAR. She says they checked that the GAR would be maintained for all new contributions. But I’ve not been provided with any evidence to show that Mr T was given any information or assurances that the GAR would apply to the increased contributions. There doesn’t appear to be any confirmation of this in writing at the time. And there’s also nothing to indicate that Mr T queried why he hadn’t received any documentation about the GAR and its application to the increased contributions he was making.

I’ve thought about what both parties have said here and reviewed all of the documentation. Having done so, I’m persuaded on balance, it’s likely the letter of 30 November 1998 enclosing both the Acceptance Schedule and the Endorsement was issued to Mr T. I can see that the letter was correctly addressed to Mr T and there’s no evidence to indicate it was returned to Aviva. So, I don’t think Aviva would reasonably have been required to do anything more to bring the documentation to Mr T’s attention.

Although there are difficulties with the erroneous references on the Acceptance Schedule, reading all of the documents together I’m persuaded, on balance, it’s fair and reasonable to conclude that the increased contribution was accepted on the basis that the GARs would only apply to the initial capital sum (£19,032) and standard annuity rates would apply to the capital sum of £36,116 referred to in the Acceptance Schedule.

I’ve also looked at subsequent correspondence received in the period prior to May 2017. Although the correspondence does refer to the GAR, there is nothing which states that the GAR will apply to all of the benefits with the policy. Rather the wording used includes statements as set out below:

*“This contract includes guaranteed annuity options...”*

*"Please note:*

*All or some of your benefits may be lost on transfer, for example:*

- Your policy has a valuable benefit called a Guaranteed Annuity Rate"*

(\*my underlining added for emphasis)

So, although the correspondence in the period up to May 2017 didn't explicitly set out which part of Mr T's policy had the benefit of the GAR, I'm not persuaded, on balance, there is anything contained in the correspondence which changed the position as set out in the letter dated 30 November 1998.

#### The Policy Information Schedule dated 26 May 2017

Mr T's last premium was due to be paid in December 2017.

On 26 May 2017, Aviva wrote to him. It appears he'd been in contact with it at this time. Aviva sent him a policy information sheet which included the following wording:

<i>Does this policy contain rights (subject to terms and conditions) to:</i> .... <i>A Guaranteed Annuity Rate</i>	Yes
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A single sum assured of £55,139 was stated.

There were notes which stated:

***"Guaranteed Annuity Rate (GAR) – This is a guarantee to pay a minimum amount of retirement income, or use a minimum rate to work out how much retirement income we will pay. These guarantees were set out when the policy was taken out and are usually more generous than current market annuity rates.***

***Guaranteed Annuity Rates Explained for your Retirement Annuity Contract***  
*Your policy contains guaranteed annuity rate options which provides a minimum rate for converting your retirement fund into a pension.*

*The guaranteed annuity rates apply for all single life level payment options between the ages of 60 and 75. They do not apply for additional single contributions paid on or after 23 September 1998, which are subject to Aviva's current immediate annuity rates..."*

Mr T says he hadn't made any additional single contributions after 23 September 1998. He says he believed this meant his whole sum assured had the benefit of GARs.

I think the wording in the letter dated 26 May 2017 could have been clearer. It could have explained to Mr T that only part of his pension fund had the benefit of the GAR. And it could have been clearer about the changes which had been made in September 1998.

Having said that, the policy information schedule does refer back to the terms and conditions. It said the policy *contained* the right to a GAR *subject to terms and conditions*.

As I've said above, I think it's likely, on balance, Mr T was sent the letter dated 20 November 1998, together with the enclosures, which had pointed out that the GAR would not apply to part of his capital sum. That was the basis on which Aviva had agreed to accept the increased premiums at that time. So, I'm not persuaded, on balance, the policy information

schedule sent in 2017 contained erroneous information. Mr T was informed that the right to the GAR contained in his policy was subject to the terms and conditions.

#### What happened in 2018?

In or about April 2018, Mr T made enquiries about reinstating his policy. He wanted to delay taking his benefits and continue to make contributions for a further period of time. There was correspondence with Aviva. On 5 June 2018 Aviva wrote to him as follows:

*“Contributions cannot be increased however, any contributions continued beyond the normal retirement date will qualify for guaranteed annuity rates.”*

It is the case that under the terms of the policy Mr T was entitled, in certain circumstances, to elect to substitute a later benefit date than the one which appeared in the original policy schedule. The terms stated:

*“If such election is made (a) premiums may continue to be paid until the substituted benefit date on such terms as the [Society] may offer but otherwise in accordance with general provision 4 and (b) and Capital sum shall be increased as determined by the [Society] having regard to the substituted benefit date and whether or not premiums are to continue to be paid...”*

General Provision 4 referred to the renewal premium as set out in the Schedule.

Mr T decided to continue his monthly contributions of £200 after the normal retirement date.

Aviva now accepts that the wording in its letter of 5 June 2018 was misleading. It says it ought to have pointed out that only his initial contribution of £30 would continue to attract GARs. I'll comment further about this below.

#### Quotations received 2022 - 2024

Mr T appears to have contacted Aviva again in 2022. It sent him an options pack dated 5 February 2022. The pack included a valuation of his pension and explained that his policy had a GAR. Under the heading “How the guarantee works” the following information was included

*“These guaranteed rates apply to your whole fund.”*

Mr T returned the form asking Aviva for a quote for a pension annuity. He also completed the retirement health questionnaire. Aviva issued a quotation dated 11 February 2022. It set out his regular contributions split into the £30 element and the £170 element – but indicated that both were GAR. He was given an annuity quotation based on the full fund attracting the GAR.

Mr T didn't take his pension at this time. In 2024 he requested a new quote and received this on 21 February 2024. This quotation also indicated that he could receive an annuity based on the GAR applying to his whole fund. There was a significant difference between what he would get if the GAR was applied to his whole fund compared to what he would get if the standard rate annuity rates were applied instead.

Mr T decided he wanted to proceed with the annuity as quoted. Aviva received his instruction on 6 March 2024. He hadn't heard anything further. So, he contacted Aviva on 9 April 2024. It was at this stage Aviva told him an error had been made and he was only entitled to the GAR on part of his fund.

## Conclusions

Having considered everything here, I am satisfied, on balance, Aviva did provide misleading information to Mr T in its letter dated 5 June 2018 and in the quotations and correspondence it issued in the period 2022-24.

For the reasons stated above, I'm not persuaded, on balance, Aviva provided misleading information prior to 5 June 2018.

The information provided after June 2018, and specifically in the period after 2022, was given at a time when Mr T was making important decisions about his retirement and considering what his income needs would be. So, I think it was important that Aviva should have taken care to make sure that the information it provided to him was clear, fair and not misleading. By its own admission it did not do that.

## **Putting things right**

When a business makes errors, or provides incorrect information to a consumer, it's not our role to fine or punish it. We look to see what the business has done to try to put things right and whether its proposals are fair and reasonable in all the circumstances of the case.

When thinking about what needs to be done to put things right our Rules provide that we can make a money award for such amount as we consider to be fair compensation for one or more of the following:

- financial loss (including consequential or prospective loss);
- Pain or suffering;
- damage to reputation;
- distress or inconvenience whether or not a court would award compensation.

There's further information available on our website setting out what our service takes into account when deciding what amount of compensation would be fair overall to put right the impact a mistake or error has on a complainant.

## Financial Loss

I've firstly considered whether Mr T has suffered any financial loss as a result of the misleading information he received in 2018 and subsequently.

### *The decision to continue contributions after 2018*

In its final response letter, Aviva offered to take into account any "substantiated evidence" Mr T would have invested his contributions after 2018 elsewhere, when it assessed his financial loss. I think that was fair and reasonable. Aviva says he hasn't provided any substantiated evidence to it. So, I've considered the evidence Mr T has provided to our service about the decision he made in 2018.

Mr T says if he hadn't been told in June 2018 that GARs would apply to all of the contributions he would have done something different. He has provided a statement from his financial adviser to support what he's said.

The financial adviser says he had discussions with Mr T about transferring his policy away from Aviva but he says he didn't advise Mr T to do this. He says this was:

*“based on [your] current circumstances at the time, [your] attitude to risk and my understanding of [your] capacity for loss.”*

The adviser also says it was his understanding, based on the 26 May 2017 policy information schedule, that the entire Aviva fund would be converted into an annuity using the GAR.

I've thought carefully about what Mr T has said and the information provided by his financial adviser.

The statement from Mr T's financial adviser indicates he took a range of matters into account (and not just the 2017 policy information schedule information) following discussions with Mr T about transferring his pension. As I've said above, the information in the 2017 policy information schedule indicated that the GAR was subject to the terms and conditions. I've not been provided with anything to show that any formal request for further information about the terms and conditions of the policy was requested from Aviva at this time. And, I haven't been provided with a copy of any formal advice or recommendation issued to Mr T following the discussions about the transfer of the policy. So, it's not clear how advanced any discussions had become about transferring the policy, or doing something different to what Mr T did do.

Having considered everything, I'm not persuaded, on balance, there's enough evidence, to show that Mr T would have done something different in 2018, or that he's suffered any financial loss, as a result of deciding to continue his premiums after 2018. When reaching that view I've taken into account the fact that all of the contributions after 2018 were invested in his pension and would have benefitted from any growth within the fund.

#### *The decision to accept the quotation in 2024*

Aviva says the quotes sent in 2022 and in 2024 were incorrect. The quotes significantly overstated the amount of the annuity that Mr T could expect to receive from his pension.

Mr T decided to accept the quote he was sent in February 2024. He would've expected to receive the higher amount quoted – an understanding that would've been underscored by the previous quotes he'd received in 2022.

Aviva told him on 9 April 2024, after he contacted it, that it had made an error. Instead only part of his annuity was calculated using the GAR. The difference in terms of his future annual income was significant.

I can understand Mr T's disappointment, frustration and upset at being given this information.

However, for the reasons stated above, I'm not persuaded, on balance, under the terms and conditions of his policy, he was entitled to the GAR on the full fund. The letter dated November 1998 together with the enclosures set out the basis on which Aviva accepted the increased premiums. He wasn't entitled to the GAR on that part of the fund which related to the increased premiums. And even though Aviva made errors in the quotations it sent to him in 2022 and 2024, that didn't change the position regarding his entitlement to the GAR.

In these circumstances, I'm not persuaded, on balance, it's fair or reasonable to require Aviva to pay the higher annuity amount it quoted.



Aviva wasn't prepared to honour the higher annuity quotation. It offered Mr T an annuity based on the GAR applying to only part of his fund. Aviva did confirm to Mr T however that he wouldn't lose out as a result of the delays to the retirement process. It agreed to extend the time period for him to decide whether to commence the reduced annuity it offered to him. And I can see it agreed to further extensions on that time period. I think that was fair and reasonable. So, I don't think Mr T has lost out financially because of the delay in commencing his annuity.

### Distress and Inconvenience

Aviva has acknowledged that Mr T experienced distress and inconvenience because of the errors it made. Aviva initially paid Mr T £1,000 by way of compensation for distress and inconvenience. After the matter was referred to our service it increased that offer to £1,500 (in total). So, I've thought about whether what it's offered to do is enough in all the circumstances that applied here.

Mr T has told us about the impact this error had on him in terms of his expectations for his income during retirement. He's also told us about the impact on his health. So, I think the errors made by Aviva here have caused substantial distress, upset and worry and did lead to a delay in Mr T deciding how he wanted to proceed regarding taking his annuity. He's also had to spend considerable time and effort progressing his complaint with Aviva and subsequently to our service.

When considering what is fair and reasonable compensation for the distress and inconvenience Mr T has experienced I've taken everything into account, including our guidelines for awards for distress and inconvenience. Having done so, although I know it will disappoint Mr T, I've decided that £1,500 (in total) is fair and reasonable compensation for what happened here.

### **My final decision**

For the reasons given above I uphold this complaint about Aviva Life & Pensions UK Limited.

I now require it to take the following actions to resolve this complaint:

- if it hasn't done so already, pay Mr T £1,500 (in total) by way of compensation for the distress and inconvenience it caused him for what happened here.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 May 2025.

Irene Martin  
**Ombudsman**