

## Ombudsman's Determination

Applicant	Mrs N
Scheme	Aviva Annuity Policy PE43001435 ( <b>the Plan</b> )
Respondent	Aviva

## Outcome

1. Mrs N's complaint against Aviva is partly upheld, but there is a part of the complaint I do not agree with. In view of the compensation award already offered by Aviva I will not make an additional award.
2. My reasons for reaching this decision are explained in more detail below.

## Complaint summary

3. Mrs N's complaint about Aviva is that it failed to correctly implement the pension sharing order (**PSO**) that was made against Mr N, her ex-husband, on their divorce. Mrs N would like Aviva to make good the difference in the figures it quoted at different times and to compensate her for the distress and inconvenience that she has been caused.

## Background information, including submissions from the parties

4. In 2016 Mrs N's financial adviser, Mr L, informed Aviva that Mr N and Mrs N were getting divorced.
5. On 3 February 2016, Aviva quoted a cash equivalent transfer value (**CETV**) of £106,038.12 for Mr N under the Plan. This included £32,179.18 in respect of a contingent widow's pension. Aviva's letter said that the CETV was not guaranteed and was for information only.
6. On 30 August 2016, Mr L told Aviva that the divorce negotiations had been completed and a total sum of £52,820 would be awarded to Mrs N under the PSO.
7. On 1 September 2016, Aviva told Mr L that Mrs N could use the award to purchase a new pension product with Aviva or another pension provider.

8. On 5 September 2016, Aviva told Mr L that the current CETV was £118,428.92, including £38,981.08 in respect of a contingent widow's pension.
9. On 10 November 2016, Mrs N's solicitor sent the draft PSO and draft Pension Sharing Annex (**PSA**) to Mr N explaining that, based on the latest CETV, £62,174.04 representing 52.49% of Mr N's pension fund should be transferred to Mrs N.
10. On 5 January 2017, Aviva asked Mrs N to send it the sealed court order and PSA.
11. The PSA was issued by Bury St Edmunds Family Court and dated 21 March 2017. It stated that 52.49% of Mr N's pension fund should be transferred to Mrs N's pension arrangement.
12. On 11 May 2017, Aviva told Mrs N that under the PSO she had been awarded 52.49% of Mr N's pension benefits, worth £38,472.08 (implying a total fund value of £73,294.11). Aviva asked her to complete a form to indicate to where the award should be transferred.
13. On 13 September 2017, Mr L told Mrs N that he had expected her to receive 52.49% of £108,000; he said the shortfall appeared to correspond to the widow's pension mentioned in the quotation. He asked Aviva why it had been excluded. Aviva replied that the full CETV should have been used.
14. On 28 September 2017, Mr L emailed Aviva: "Thanks for confirmation that Aviva are standing by their original figures. You indicate that a sum of £56,989.43 will be issued which would put the total TV at £107,730.49." Mr L asked Aviva to explain why this was significantly different to its September 2016 calculation.
15. On 29 September 2017, Aviva emailed Mr L "The total valuation came out as £108,571.97", explaining that the amount was affected by increases in annuity rates and the fact that Mr N and Mrs N were now one year older.
16. On 3 October 2017, Aviva told Mr L that its actuarial team had confirmed that the final valuation was calculated using the rates in force when the PSO was issued; the final valuation was £107,730.49, of which £56,989.43 was awarded to Mrs N.
17. On 4 October 2017, Mrs N asked Aviva to check its CETV of £107,730.49, saying that her solicitor had negotiated for her to receive 52.49% based on the 5 September 2016 CETV of £118,428.92.
18. When Mr L asked Aviva to supply a breakdown of the two sets of CETV calculations, Aviva said that it could not do so as the details were business sensitive, but it explained that annuity rates had decreased since September 2016.
19. In a letter dated 19 October 2017, Mrs N complained to Aviva that it had used the CETV of £107,730.49 which was lower than the 5 September 2016 figure, so she had lost about £5,000.
20. Mrs N sent a reminder to Aviva on 30 November 2017.

21. In a letter dated 11 December 2017, Aviva said that it had not received Mrs N's letter of 19 October 2017; it explained that according to its actuarial department the reduction in the CETV was due to changes in mortality assumptions (-5%), Mr N and Mrs N's increased ages (-3%) and a change of postcode (-1%).
22. On 7 January 2018, Mr L complained to Aviva that due to its delays Mrs N had been disinvested for five months.
23. Mrs N wrote to Aviva again on 8 January 2018, saying its reply was extremely unsatisfactory. She asked how the CETV could increase by over £12,000 between February 2016 and September 2016 but decrease by nearly £10,000 later. She complained that no transfer had been made to her chosen self-invested pension plan (**SIPP**).
24. On 9 January 2018, Aviva told Mr L that in its internal communications it had used an invalid reference number, with result that Mrs N's transfer forms were not sent to the correct department in 2017.
25. Aviva sent Mrs N a notice of discharge of liability on 24 January 2018. The notice said that the PSO pension credit of £56,547.74 had been sent to Aviva Client Services (as she had selected a SIPP administered by Aviva).
26. On 6 February 2018, Mr L complained to Aviva that the money had still not been credited to Mrs N's pension account, and she had lost out on investment growth since May 2017.
27. On 12 February 2018, Mrs N chased Aviva for a reply to her letter of 8 January 2018.
28. On 12 March 2018, Aviva told Mr L that the payment for Mrs N was applied to her account on that day. Mr L asked Mrs N to decide what fund it should be invested in.
29. On 13 April 2018, Mrs N sent another reminder to Aviva about her letter of 8 January 2018, seeking compensation for the amount of time taken. On 16 April 2018 Aviva told Mrs N that the money had been used to purchase a pension plan in her name, as she had instructed.
30. On 17 April 2018, Mrs N asked Aviva again to reply to her previous questions. The following day Aviva emailed Mrs N with a response provided by its actuarial team: there had been an error in its earlier email as the main reasons for the reduced CETV were expected mortality and investment returns; interest rates had gone down from February 2016 to August 2016, then went up again until February 2017; this caused an increase, followed by a decrease, in the CETV figures.
31. Mrs N complained that Aviva's email did not explain the reason for the extensive delay in transferring the funds, and the delays in answering her questions.
32. On 20 April 2018, Aviva emailed Mrs N to say that it had tried unsuccessfully to call her; it had logged her complaint, but it had a current response turnaround of eight weeks.

33. In an email on 23 April 2018, Aviva acknowledged Mrs N's letter of 8 January 2018 and her recent email. The next day Mrs N complained that Aviva had named her as Mrs JGN, using Mr N's initials. Aviva apologised for this typing error.
34. Mrs N then contacted us.
35. In its formal response on 21 May 2018, Aviva admitted that there had been an unacceptable delay between 10 May 2017 and 5 March 2018 and said that for this it had arranged to pay interest of £375 to Mrs N's SIPP. Aviva explained why different CETVs were quoted at different times, but said she was not entitled to the higher amount; it said it had not received Mrs N's letter of 19 October 2017, and acknowledged that it should have explained the position earlier, admitting that it had taken too long to investigate the points raised in her letter of 1 December 2017, and did not return a phone call. In acknowledgement of these failures, Aviva said it had also paid £350 to Mrs N's bank account.
36. When Mrs N said that in her view the proposed compensation was inadequate, the Adjudicator asked Aviva to reconsider the matter. Aviva responded that "this should have been a relatively straight-forward transfer from one Aviva contract to another". Aviva said it would perform a loss assessment, assuming that the money had been reinvested on 29 June 2017: if the financial loss exceeded the £375 interest payment, it would adjust Mrs N's fund units to reflect the difference and pay an extra £150 for Mrs N's distress and inconvenience. If the financial loss was less than the £375 interest payment it would not adjust the fund units but would still pay an extra £150 for Mrs N's distress and inconvenience. In reply, Mrs N said that her complaint warranted more compensation.

### **Adjudicator's Opinion**

37. Mrs N's complaint was considered by one of our Adjudicators, who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-
  - Aviva had acknowledged that the transfer from the Plan to the SIPP took too long, and offered Mrs N compensation, so there was no dispute that a problem has occurred, and that Mrs N had been disadvantaged as a result.
  - Mrs N was unhappy that her pension share was not based on a CETV of £118,428.92, as had been calculated on 5 September 2016. However, that calculation was out of date by the time that the PSO was implemented. The percentage specified in the PSA (52.49%) was applied to the most recent valuation, namely £107,730.49, as was required.
  - It might be that, with hindsight, the percentage figure set out in the PSA was too low. However, Aviva, as the Plan administrator responsible for implementing the PSO, was bound by that percentage. It could only be amended by the court.
  - Aviva acknowledged that the PSO should have been implemented in mid-2017 instead of March 2018. To address the financial loss this had caused, Aviva had agreed to perform a loss assessment, based on a notional reinvestment date of 29

June 2017. That date appeared reasonable as it assumed the whole process should have taken about seven weeks after Aviva received all the necessary documentation. Aviva's proposal to adjust the fund units to reflect any loss in excess of the £375 interest payment that Aviva had already made to the SIPP was reasonable, assuming that the loss would be measured up to a contemporary date. That would put Mrs N in the position she should have been in.

- Aviva's administration of this matter and its communications with Mrs N were below the standard that should have applied, and in several respects constituted maladministration. For example, Aviva gave conflicting reasons for the differences in the CETV calculations, used an incorrect reference number which delayed its internal processes, and was careless in the way it addressed Mrs N in some emails. Also, Aviva's emails in April 2018 were less helpful than they should have been. Mrs N had to send several reminders to Aviva at a stressful time. Mrs N should receive some compensation for the distress and inconvenience that Aviva had caused her.
- The sum of £350 that Aviva paid to Mrs N was less than the minimum award of £500 that I make in most cases nowadays where maladministration has caused significant distress and inconvenience. When this was pointed out to Aviva it offered to pay Mrs N an additional £150, making £500 in total (whether or not the fund units had to be adjusted).
- It was therefore the Adjudicator's opinion that the complaint should be partly upheld, because Aviva took longer than necessary to implement the PSO, and it did not communicate with Mrs N, as quickly and as clearly, as it should have done; but if this matter were to be referred to me for a final, binding determination the Adjudicator not think I would make a larger award than that currently proposed by Aviva.

38. Mrs N did not accept the Adjudicator's Opinion, and the complaint was passed to me to consider. Mrs N provided her further comments, which do not change the outcome. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Mrs N for completeness.
39. Mrs N's main concern was that the total compensation offered by Aviva (£500 in total) did not reflect the time, distress and anxiety that Aviva had caused her. She also complained that Aviva had not answered all her queries of 8 January 2018 and asked why Aviva had continued to pay a monthly income to her ex-husband at the full rate up to September 2017. Lastly, Mrs N wanted to know how the interest payment of £375 had been calculated, as she thought the amount looked extremely low.
40. The Adjudicator sent Mrs N's comments to Aviva on 8 November 2018 but had to resend the letter on 4 December 2018 because Aviva could not locate it. In its response later that month, Aviva said that the interest payment of £375 had been calculated in accordance with the Bank of England base rate (0.75%) at the relevant time, from 10 May 2017 to 12 March 2018. However, it should have calculated the interest using the cash account interest rate of 0.42% over the shorter period in June 2017, when the money was not invested. In the circumstances Aviva said it would

honour the larger amount. Aviva admitted that between May 2017, when the completed forms were received, and April 2018, when the funds were reinvested, it had caused confusion and issued incorrect and misleading information. Aviva also explained that although Mrs N's husband received larger income payments between May and September 2017, these had no adverse impact on the PSO because Aviva would honour its May 2017 quotation by applying £56,989.43 to Mrs N's account. It would also send Mrs N an additional £200 for the confusion it had caused. Mrs N considered this compensation to be insufficient.

### **Ombudsman's decision**

41. Mrs N's queries of 8 January 2018, related to the differences in the various CETV figures quoted, and the fact that her SIPP had still not received any money from Aviva. Aviva's actuarial team explained the difference in CETV figures in an email dated 18 April 2018, and her SIPP received payment from Aviva on 12 March 2018, so those matters have been resolved.
42. It was unsatisfactory that, although the relevant transfer forms were completed in May 2017, the funds were not reinvested until April 2018. That delay constitutes maladministration. Aviva paid interest of £375 for late payment, and I consider that amount to be sufficient to remedy Mrs N's financial loss bearing in mind that, as Aviva explained, a more scientific calculation would probably have resulted in a smaller amount.
43. With regard to awards for non-financial injustice, where the applicant has been caused distress and inconvenience, £500 is the amount that I would normally award in those cases where I consider that maladministration has caused significant non-financial injustice. I will award £1,000 if the distress and inconvenience suffered is serious, but no intermediate amounts. In the circumstances of this case I consider that the award of £700 currently offered by Aviva is sufficient, so I will not make a larger award.
44. Therefore, I partly uphold Mrs N's complaint.
45. If Mrs N has not received the balance of the £700 offered by Aviva in respect of the distress and inconvenience which she has suffered, she should contact Aviva to arrange payment should she wish to accept the offer.

**Anthony Arter**

Pensions Ombudsman  
29 March 2019