

The complaint

Mr A complains on behalf of his mother's (Mrs A's) estate, about the surrender of her investments by Aviva Life & Pensions UK Limited, referred to as "Aviva".

In short, Mr A says that Aviva is wrong to claim that it paid out money to the estate of Mrs A in error and request the funds back. He believes the funds were paid out correctly and now belong to his mother's estate, and therefore shouldn't have to be returned.

Mr A also says Aviva hasn't treated him fairly, it hasn't considered his evidence, and hasn't proved to his satisfaction that the bonds (referred to as "bonds" or "investments") were paid out.

What happened

In my provisional decision of 18 October 2021, a copy of which is quoted below and forms part of this final decision, I said I wasn't minded to uphold the complaint. I said:

"...provisionally I'm not going to uphold this complaint.

On the face of the evidence, and on balance, provisionally I think it's more likely (than not) that Aviva paid the estate of Mrs A £73,426, in error. However, despite what Mr A says, I'm unable to safely say that in the circumstances Aviva behaved unreasonably in requiring the money back.

Before I explain why this is the case, I think it's important for me to note I very much recognise Mr A's strength of feeling about this matter. I'm also very sorry for the loss of his mother and the recent health issues that he has experienced. I realise this must be a difficult time for him.

Mr A's provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr A, and Aviva, and reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. But it's for me to decide, based on the available information I've been given, what's more likely than not to have happened.

It's always difficult for an executor to retrospectively piece together what went on with a business in the past, over a period and why. Especially when they've not been privy to discussions between investors, and between investors and the business. It can be made even more difficult when there's limited information, and what's available doesn't make sense or satisfy the executor. But, whilst I appreciate what Mr A says about the available information, it's all we have. I appreciate Mr A's mother and stepfather kept a good record of their finances. But, just because Mr A's now unable to find documents relating to the

surrender of these investments, doesn't, on balance, mean that they weren't.

Whilst I appreciate what Mr A says about why he thinks the investments were still active when his mother passed away, I'm afraid I don't agree.

On the face of the available evidence, and on balance, I think that an error was – more likely (than not) – made when the system migrated many years ago from the third-party building society, and the investments were recorded as active despite being surrendered. On balance I think the error was left unchecked and continued with impunity throughout other system migrations. I also think the further in time it got from the initial error, the less obvious it was and more difficult it was to detect, without an audit and going through archived documents, which is what Aviva eventually did when the error came to light. This explains why the issue wasn't taken up with Mrs A and her husband and dealt with years before they sadly died.

I agree with the investigator that the error ought to have been nipped in the bud, but wasn't, and is therefore responsible for making Mr A as the executor of his mother's estate, think that her estate was legitimately due funds that it wasn't entitled to.

Unfortunately, errors of this kind aren't entirely uncommon in relation to old investments that have been administered by several third-party businesses over years, before being taken over by the final business.

Often in these circumstances, consumers also end-up getting taken in by the error. I think Mrs A and her husband would've raised an issue if they were aware. Despite what Mr A says, Aviva isn't suggesting that Mrs A and her husband knew that there was a mistake and kept quiet thereby committing fraud. That's probably why it's not asking for any other money back. In other words, Aviva has made clear that it won't be seeking to recover any of the previous payments made on these investments, so it's not something that Mr A needs to worry about.

I note Aviva accepts that the investments (erroneously) appeared as active on its system, and that's why it initially paid Mrs A's estate the money in error. So, Aviva, like Mr A, also thought the investments were active, before delving deeper.

I note Aviva says that this is primarily the reason why Mrs A continued to receive statements and an income from the investments. I think this will have no doubt (and unhelpfully) reinforced Mr A's genuinely held belief that these investments were still active. But in the circumstances, I think it's likely that Mr A's belief, albeit genuine, is mistaken.

Despite what Mr A says, in this instance and considering the evidence provided by Aviva, I don't agree that Mrs A receiving statements and an income, is of itself evidence that the investments were active. I'm also mindful that the new solicitors might have some paperwork, but they're in a mess, and a lot of the documents have been lost. It's possible that surrender documents relating to these investments have been lost.

Aviva has provided archived evidence from August 1990 – which I assume wasn't readily available and that's why it took over a month to source and go through – which relates to surrender instructions and confirmation of policy numbers, and includes notification sent to Mrs A at her and her husband's address at the time. The correspondence also refers to the surrender value and the inclusion of a cheque. Aviva has also provided evidence of correspondence with HM Inspector of Taxes relating to a chargeable event. On balance all of this relates to the surrender of large number of investments that Mr A has no record for and can't explain.

On the face of the evidence, and on balance, I'm persuaded that it's more likely than not the investments in question were surrendered in August 1990 and Mrs A was paid the proceeds in the form of a cheque.

It seems that Mr A wasn't privy to this information at the time, but in my opinion his lengthy response to the investigator's view doesn't adequately address the archived evidence. I also don't think that him not being able to find a significant deposit into the only bank account that he was aware of at the time, is evidence that Mrs A wasn't paid. The money could've been cashed elsewhere or paid into an account that Mr A simply wasn't aware of, or an account for which the documents have been lost.

None of what Mr A says adequately deals with the archived evidence supplied by Aviva. Like the investigator, I don't accept Mr A's suggestion that these investments were surrendered and reinvested under similar policy numbers. It doesn't explain or deal with the archived evidence supplied by Aviva.

In other words, having considered Mr A's latest submissions, post investigator's view, my decision remains unchanged. In my opinion, nothing that Mr A points to undermines what Aviva says in this case. In other words, nothing that he says suggests (on balance) that the policies weren't already surrendered.

I appreciate Mr A's comments about Aviva not being able to provide more evidence. But businesses aren't required to retain information indefinitely. So, in the circumstances I can't blame Aviva for not being able to provide more information or answer Mr A's questions to his satisfaction, such as proof of a migration error and exactly when it happened – especially in relation to investments that are over 30 years old and administered by several businesses.

Whilst I don't doubt that Mr A has suffered significant distress and inconvenience dealing with this issue, I should make clear that under the rules governing our service, Mr A (as the executor and representative) as well as the estate of Mrs A, aren't technically entitled to any compensation for distress and inconvenience. I'm aware Mr A thinks that he is eligible to receive compensation and that £500 isn't enough.

In the circumstances, awarding Mr A £500 compensation for the trouble and upset caused wasn't correct. I can only tell a business to pay compensation for trouble and upset experienced by its customer, not by a third party. So, Mrs A's estate would only technically be entitled to compensation for financial loss and Mr A isn't entitled to any compensation. I'm mindful that Aviva has already agreed to pay Mr A £500 compensation for the distress and inconvenience caused. It's a matter for Aviva whether it keeps to this agreement, although I would expect it to do so.

The legal route is of course open to Aviva and it is entitled to manage expectation in terms of future court action if the money isn't returned. But I don't think Mr A can be criticised for making sure that he's not returning money that belongs to his mother's estate. I'm mindful that Mr A himself doesn't really know what happened between 1990 and 2000, but he wasn't comfortable just handing over the money unless some of his questions were answered.

In conclusion, on the face of the evidence and on balance, I'm satisfied that the money was paid to the estate of Mrs A in error by Aviva, and in the circumstances, I think it's entitled to ask for it back. In other words, it's not unreasonable for it to ask for the money back.

I appreciate Mr A will be thoroughly unhappy I've reached the same conclusion as the investigator. Whilst I appreciate his frustration, I'm not going to ask Aviva to do anything.

On the face of the available evidence, and on balance, I'm unable to uphold this complaint

and give him what he wants.”

Aviva responded and agreed with my PD. However, it clarified that it hasn't offered to pay Mr A any compensation. Although it's minded to agree with the investigator's rationale for doing so, it will pursue the return of the money and will consider any compensation once the monies have been returned in full.

Mr A responded but didn't agree with my PD. Having been chased for a response by the investigator (at my request) – a day or so before the deadline – Mr A sought more time to respond. He also requested the key documents provided by Aviva that he says he hasn't previously seen. Mr A then sought more time to speak to a solicitor and consider the PD further. He sought an extension to that request because his solicitor had broken his wrist and couldn't drive into the office.

On 14 December 2021, Mr A provided the following submissions in response to my PD:

- His solicitor doesn't have any additional submissions to provide.
- His solicitor, like him, maintains that the evidence from Aviva isn't conclusive, and since he's not found an account into which the money has been paid, it suggests the investments haven't been encashed.
- He's now made further enquires with a third-party bank, as there was some suggestion of errors made with bank account numbers. He has asked if the bank can forward statements for the period between 2000 to 2002 that might show what has and hasn't gone in.
- He's aware that this period is beyond the period that banks are likely to hold information, but he's hoping that it will. The bank has told him that it will get back to him either way in 10 working days.
- Even if this information doesn't help me reach a decision it might help with any follow up cases.
- He would appreciate if I could defer my final decision until after the Christmas break. His mother's Will is being contested by a third-party, and he's had a lot to deal with.

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, my decision remains the same as set out in my provisional decision, for the same reasons.

Notwithstanding the points made by Mr A, I don't consider that any new material points have been made. I'm still satisfied that the key points remain the same, and have been considered by me, in my provisional decision (PD).

I've given Mr A time – on several occasions – so that he can go through the PD, see a solicitor – even though he's been self-representing his mother's estate throughout this process – and provide any new material submissions.

I made clear to Mr A from the outset that I agreed with the investigator's conclusion regarding the money paid in error to Mrs A's estate, however I didn't agree that Mr A as the representative of his mother's estate was entitled to any compensation for distress and inconvenience.

On the face of the evidence, and on balance, despite what Mr A says, I still think it's more likely (than not) that Aviva paid the estate of Mrs A £73,426, in error. And, I'm unable to safely say that in the circumstances Aviva behaved unreasonably in requiring that the money be paid back.

Despite giving Mr A additional time, nothing that he has said in response to my PD has persuaded me to change my decision. I don't believe I need to wait any longer before proceeding to my final decision.

I understand that Aviva didn't confirm that it will pay Mr A any compensation but agrees with the investigator's rationale for doing so. I apologise if I interpreted this as an undertaking by Aviva to pay Mr A compensation as suggested by the investigator.

Whether (or not) Aviva decides to pay Mr A (as representative of his mother's estate) any compensation upon return of the monies, I'm unable to ask it to do so for the reasons I've explained in my PD.

In other words, the investigator awarding Mr A £500 compensation for the distress and inconvenience caused wasn't correct. I can only tell a business to pay compensation for distress and inconvenience experienced by its customer, not by a third party. So, in the circumstances Mr A isn't entitled to any compensation, although Aviva has said it will consider the position.

In conclusion, on the face of the evidence, and on balance, I'm satisfied that the money was paid to the estate of Mrs A in error by Aviva, and in the circumstances, I think it's entitled to ask for it back. In other words, it's not unreasonable for it to ask for the money back.

I appreciate Mr A will be thoroughly unhappy with my conclusion. Whilst I appreciate his frustration and the difficult year that he's had, I'm not satisfied Aviva has done anything wrong.

My final decision

For the reasons set out above, and in my provisional decision, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs A to accept or reject my decision before 2 February 2022.

Dara Islam
Ombudsman