

The complaint

Mr S has complained about errors arising from the process of crystallising funds from his pre to post retirement accounts with Aviva Life & Pensions UK Limited (Aviva), which he says has caused a number of problems within his overall portfolio. This complaint is about the impact such an error might have on Mr S's fixed protection 2016 and the possibility of exceeding his lifetime allowance (LTA) – for which Mr S wants an indemnity in the event of any future tax surcharges, should his fixed protection be revoked.

Mr S wants his accounts to be restored to the position they ought to be in had the crystallisation been carried out correctly, he also wants compensation for the trouble and upset the matter has caused him.

What happened

Mr S holds a plan with Aviva which includes pre and post retirement accounts and a general cash account as part of an overall portfolio. In January 2020 he wanted to transfer around £69,000 from the pre to post retirement account and move the tax free cash element of around £17,500 into the general plan – before purchasing further investments with that cash.

The sale that was required to provide the cash from the first part of the process was completed, but Mr S's adviser was then informed that it couldn't crystallise the funds from the pre-retirement account to the post retirement one because it held Exchange Traded Investments. This was found to be incorrect and following a delay the transfers took place on 6 February 2020 – but using incorrect fund prices. There was also an error in allocating the tax free cash to the general investment account which caused a delay in Mr S being able to purchase additional funds with the cash until 17 February 2020.

Mr S's adviser complained about the matter to Aviva in January 2020. It said these errors and delays meant that:

- The crystallisation was completed using the incorrect number of units. This also affected Mr S's LTA – against which he held fixed protection 2016.
- A small number of units in one investment had been left in the pension account.
- The cash account of the pre-retirement account was overdrawn and had to be corrected by creating dividends.
- There was a price difference in the funds Mr S purchased on 17 February 2020 which caused him to suffer a financial loss.
- Backdated charges were applied to the general investment account despite it being agreed that none would apply.
- Mr S wanted to sell the remaining assets on 5 March 2020, but it was too complex considering the errors that occurred previously. So he had to sell units from the post retirement account which meant a tax charge of £1,142.24 was incurred.
- Mr S wanted to move away from Aviva's platform but couldn't do so as the LTA and unit prices remained incorrect. This also meant he continued to be charged plan fees by Aviva.

Aviva accepted the errors and agreed to correct them. It said it would ensure Mr S was put back as close to the position in which he should have been had the transactions taken place when they should have done. This included indemnifying Mr S against a claim from HMRC if his fixed protection 2016 was invalidated. But, by May 2020 Mr S said Aviva had still failed to carry out the corrections and so he brought his complaint to us.

During the time the complaint was with the investigator most of the outstanding issues were either resolved or – where they were regarded as separate complaint points, new complaints were raised.

So, one of our investigators looked into this matter but said this particular complaint about breaching the LTA shouldn't be upheld. He concluded that, while most of the outstanding issues had largely been resolved at this point, Aviva didn't rectify them as it said it would and he felt its offer of £100 for the distress and inconvenience this caused was fair and reasonable.

He referred to other issues which Mr S had raised which he said should be addressed by Aviva in the first instance, namely the issue with the higher unit price of the bond funds that had to be purchased and the reimbursement of a tax loss suffered by not being able to sell assets from the pre-retirement account.

Mr S didn't agree, however, making the following points:

- He hadn't received the letter we said Aviva sent him on 9 April 2020 about the corrections, as this had only been sent to his adviser. He wasn't aware of the letter until 23 July 2021.
- He wanted confirmation of when Aviva would pay the £100 for the trouble and upset caused.
- He accepted that there was no financial loss attributed to the LTA, so understood that this was simply a question of compensation for the distress and inconvenience caused. But looking at the emails and phone calls he had to make – which he estimated had meant at least 30 hours trying to resolve the matter, he thought this should have led to a higher compensation amount being recommended. He said this was as a result of Aviva not carrying out the request properly and continuing to provide incorrect information about the processing of the amendments.
- He'd been told of a response Aviva said it would send him in September 2021 outlining the amendments. But he still hadn't received the response so was still unaware of whether the adjustments were correct.
- He was surprised that a new investigation was required for his other complaint points as he'd told us about those matters in his initial complaint.
- He cited a separate complaint from which he'd received £5,200 compensation but which he said related to the financial loss not the distress and inconvenience he'd suffered – for which he only received £750.
- On checking our website further, he thought this complaint should be considered within our "*award of up to £750*" category for the amount of trouble and upset he thought he'd suffered.

The investigator wasn't persuaded to change his mind and he reiterated that the offer was in line with what he'd expect to see for such errors. However, Mr S asked for an ombudsman to consider the outstanding issue of whether the offer for distress and inconvenience was fair - particularly in light of the information on our website. So the complaint was passed to me to review.

My provisional decision

In my provisional decision I said that Mr S's complaint should be upheld. I said Aviva should pay a total of £300 for the distress and inconvenience the matter had caused. I made the following points in support of my conclusion:

- I agreed with Mr S that the ongoing various complaints around the transfer of his money from pre to post retirement accounts was becoming confusing. I confirmed that my decision was solely about the impact Aviva's failure to correct matters following the delay to the transfer had on his fixed protection 2016, in respect of his LTA.
- The other matters which hadn't been resolved should be looked into by Aviva in the first instance.
- During the time we'd investigated the complaint Aviva had been able to demonstrate to Mr S that it had completed its corrections and he was satisfied that his pension fund value wouldn't be inflated to the extent that his fixed protection 2016 would be revoked by HMRC.
- So the only matter remaining was the extent to which I thought Aviva should compensate Mr S for the distress and inconvenience this had caused him.
- Although I'd taken into account the time Mr S had spent chasing up his complaint and providing evidence to support it, I considered the impact the matter itself had on Mr S.
- I thought he would have been concerned – over an extended period of time – that he might incur a significant tax surcharge. And I thought he would have been concerned about not obtaining the indemnity that he wanted Aviva to supply in case its actions did cause him to incur the tax bill.
- I also thought the previous compensation Mr S had received from Aviva shouldn't be taken into account when deciding how much compensation was due in this complaint.
- Looking at all the factors involved I thought Aviva should pay an additional £200 compensation meaning it should pay £300 in total.

Responses to my provisional decision

Aviva agreed with the outcome and said it would be happy to settle on the terms I set out. But Mr S didn't agree. He made the following points in response:

- He noted that I had acknowledged the fact that he might incur a significant tax surcharge and how serious that matter could be. So he was surprised my compensation award didn't reflect this serious situation by being at the lower end of "our scale".
- He thought that the fact it had taken nearly two years to resolve this matter, during which time Aviva consistently said it had corrected his position but hadn't, should have led to me recommending a greater award.
- While our website is clearly only a guide to the type of awards that could be recommended, he thought that guide should be followed unless there is a clear reason not to do so. He asked me to explain which factors, in this case, had led to an award much lower than the guidelines on our website suggested was appropriate.
- Aviva had also misled this service about the fact it had made the necessary corrections. He thought that if this service was unable to get the correct information from Aviva then I should realise that it would have been more stressful and difficult for a client such as him to obtain that same information.
- In his view it was a surprise that a combination of the time taken to resolve things, as well as the stress of a possible significant tax bill "hanging over him", had led to the award of compensation that seemed to apply to our lowest category of awards.

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.

I've carefully considered the additional points that Mr S has raised about the amount of compensation I recommended in my provisional decision. And I can understand his position here and the strength of his feelings about the matter. Mr S has made a number of points questioning why I hadn't followed the guidelines our website set out for awards of up to £750.

But having thought about the matter I see no reason to depart from my provisional findings. I think Aviva should pay Mr S £300, in total, for the distress and inconvenience caused by the fact that its errors and delay might have affected his LTA by making his fixed protection 2016 invalid – thereby causing him a significant tax liability.

There's no dispute here about the errors that Aviva made when it was asked to transfer funds between two accounts in Mr S's pension plan. This delay had a "knock on" effect which caused further problems and meant Aviva needed to do some remedial work and calculate the position Mr S's plan should have been in had the error and delay not occurred. But, having written to Mr S in April 2020 to confirm the work it was going to do, Aviva failed to correct matters and it was only in September 2021 that it finally carried out the corrections.

But Mr S has confirmed the position of his plan has now been restored and he is satisfied he won't face a tax surcharge because of the previous error. So there just remains the question of the appropriate level of compensation for the impact this matter had on Mr S.

So, I've looked at the impact of the situation whereby an incorrect valuation of Mr S's plan could have led, if circumstances dictated, to HMRC declaring his fixed protection 2016 as invalid. That could have meant that Mr S would incur a tax liability on the value of the fund that was in excess of the LTA.

Mr S says there are two main reasons to think the level of compensation should be higher. He says both the time taken to resolve the matter and the amount of time he needed to spend chasing up Aviva over that extended period to complete the remedial work – along with the stress of potentially facing a significant tax bill, ought to merit an award of around £750 – in line with the guidelines from our website.

I do accept that Mr S expected the corrections to be made in April 2020, but they weren't completed until September 2021 – so he would have had this on his mind, at various times during that period. But at the same time Mr S brought his complaint to us in May 2020, so it was this service that took over the investigation and tried to get a positive outcome for Mr S during that time.

Of course, I accept that Mr S was still trying to resolve things himself and was trying to mitigate his position, but this service was looking into the matter around one month after Aviva had said it would put things right. So I don't think Mr S was impacted in quite the same way as if he had to pursue an ongoing complaint against Aviva himself – for the two year period that's been referred to.

I don't dispute that Mr S has put a lot of time and effort into his complaint – but we wouldn't normally make a specific award for the "costed" time taken to bring and pursue a complaint –

although I have taken this into account when considering the overall impact caused here.

I don't dispute that Mr S would have been concerned about the possibility of his fixed protection 2016 being revoked – although I note that Aviva did state in its letter of 9 April 2020 that, *“having reviewed the case in detail I can confirm that there will no impact on your protection held with HMRC. The corrective action taken is something that will be carried out in the background and while there will be corrections to the asset/cash movement that was part of the issue, this would not have any bearing on your protection held nor would there be a reason for us to report any additional information to HMRC surrounding this transaction.”*

I know Aviva didn't actually carry out the corrective work at that time, so Mr S would have remained somewhat concerned – but ultimately there's no evidence to show that Mr S was either told he would have a tax liability or that he had breached the LTA rules and should expect a penalty. I can understand his ongoing concern, but I don't think it would have been the same level of concern he would have had for example, if he was in possession of communication actually stipulating that he might have to pay a penalty.

I don't underestimate how this may have made Mr S feel and the concern it would have caused him. But when taken into consideration alongside the factor of the time taken to resolve matters, I think it warrants an award in the range of what I've previously stated.

Our role isn't to punish a business for its actions but to make financial awards – where appropriate, for the impact of these (negative) actions on consumers. And I know Mr S has referred to our website for the guidance on what he sees as confirmation that the level of award he should receive is higher than I recommended in my provisional decision.

But that information is *“guidance”* showing case studies and examples of the level of compensation paid in certain situations. We look at every complaint on an individual basis, and in this case I've taken all the evidence into consideration and reached the conclusion that the amount of £300 seems fair and reasonably aligned to the impact I think the possibility of a tax liability caused by Aviva's actions had upon Mr S.

Putting things right

Aviva should pay a total of £300 for the trouble and upset its actions have caused. This is an additional £200 on top of the £100 it's already offered.

My final decision

I uphold Mr S's complaint against Aviva Life & Pensions UK Limited.

Aviva Life & Pensions UK Limited should compensate Mr S as stated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 June 2022.

Keith Lawrence
Ombudsman