

The complaint

Mr P complains that Aviva Life Services UK Limited (Aviva) sent him incorrect information about a Deferred Pension Annuity. He said this led him to take £50,000 of tax-free cash from another pension, which he wouldn't have taken if he'd not received the incorrect information.

What happened

Aviva wrote to Mr P in June 2021 about a Deferred Replacement Pension Annuity in relation to a pension he'd built up with a former employer. The letter stated that Mr P would receive a pension of around £12,000 each year and that it would start to be paid on his 60th birthday, which was later that year.

Mr P said he asked his financial adviser for advice given the information in the letter. He said he then decided to take a £50,000 tax-free cash withdrawal from a pension held with another provider. He did this in July 2021, a little over two weeks after getting Aviva's letter.

Mr P didn't hear anything further from Aviva about the pension it'd written to him about so he contacted it in November 2021 about the Deferred Replacement Annuity.

Aviva told Mr P there'd been an error. And that he wasn't entitled to any further pension benefits as he'd previously transferred the benefits out. Aviva said it would find out more information.

Aviva called Mr P in December 2021. It said it'd been told by the previous administrators of his pension that he no longer had any benefits under the scheme in question. And that he'd transferred his benefits out of the scheme in May 2019. Aviva said it hadn't been told that he'd transferred out his benefits, which is why it had issued the information it'd sent him by mistake. Aviva also wrote to Mr P to confirm its response.

Mr P complained to Aviva about the mistake. He said he'd decided to take £50,000 of tax-free cash from another pension based on the information Aviva had sent him about the Deferred Replacement Annuity.

Aviva issued its final response to the complaint on 15 December 2021. It didn't uphold it. It said it had acted in line with the instructions and information it had received from the previous scheme administrators. And that it had only found out after it had written to Mr P that he'd transferred his benefits out of the scheme in May 2019. Therefore he wasn't entitled to a further benefit under the plan.

Unhappy, Mr P brought his complaint to this service. He said he'd had to reassess his pension with his financial adviser since he'd taken the £50,000 tax-free cash withdrawal from another pension. And that he would've left that invested if Aviva hadn't sent the incorrect information. He wanted Aviva to replace the £50,000 he'd withdrawn.

Our investigator asked Mr P what he'd done with the £50,000 tax-free cash he withdrew. And if any of it was left. He also asked him who had handled the transfer of his pension in May 2019. And if it was the same adviser he used now.

Mr P told our investigator that he'd used some of the money to carry out renovations on his house. And that he'd also bought a car and had a family holiday. He said he had £10,000 left and that he intended to use it for further renovations. Mr P also said that he'd used different advisors for the May 2019 transfer out and the more recent advice.

Our investigator felt that the complaint should be upheld. He felt that Aviva had caused Mr P a loss of expectation when it'd written to him about a pension he wasn't entitled to. And that it should pay him £400 compensation for the distress and inconvenience it had caused him.

Aviva said it agreed with our investigator's findings.

Mr P asked our investigator to explain how he'd arrived at the compensation he'd suggested.

Our investigator said that this service never asks a business to pay out benefits which weren't ever due. He also said that although Mr P's retirement plans had needed to change, he'd benefited from the £50,000 tax-free cash withdrawal as he'd carried out a lot of work on his home. He said that this service would only make an award for the distress and inconvenience Aviva had caused. And that he felt that £400 was a reasonable amount under the circumstances.

I understand that Aviva sent Mr P a cheque for £400 in August 2022, but that the cheque was in the wrong name. Mr P told this service that this had caused further frustration.

Our investigator said this was a separate issue from the original complaint. He told Mr P that he could choose to raise a further complaint about the incorrect cheque. But that it might not be one that could be referred to this service as it solely related to customer service.

As agreement couldn't be reached, the complaint has come to me for a review.

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'm going to uphold it. But I agree with our investigator that £400 compensation is reasonable under the circumstances. I know this will be disappointing for Mr P. I'll explain the reasons for my decision.

Aviva doesn't dispute that it gave Mr P incorrect information about a Deferred Replacement Annuity. It said that the previous administrators had transferred the value of Mr P's pension out in May 2019, but didn't inform it. So that when it sent Mr P information about the pension in June 2021 it wasn't aware of the transfer out. It said that it only became aware of the issue in October 2021. And that it investigated the situation and told Mr P what had happened at that point. But it didn't uphold Mr P's complaint as it didn't think it was responsible for the error.

Mr P said that he had various pensions with various companies over his working life. And that he'd transferred some of these pensions into a private pension scheme in 2019, using a financial adviser that he no longer used for advice. He said he'd sent the paperwork Aviva had sent him in June 2021 informing him of an almost £12,000 annual pension to his (new) financial adviser. And that he'd been told that this would make a significant difference to his pension payments. So he decided to withdraw a tax-free lump sum of £50,000.

Mr P felt he'd been misled, misinformed and financially let down by Aviva. And that he wouldn't have taken the large tax-free lump sum from his pension if he'd not been given the

incorrect information. He also said Aviva's error had caused him to have to change his retirement plans.

I need to decide if Aviva acted fairly and reasonably when it didn't uphold Mr P's complaint. And if it didn't, whether it should pay him any compensation.

I first reviewed the information Aviva sent to Mr P in June 2021. This stated that the trustees of Mr P's former employer's pension fund had taken out a policy with Aviva to replace the benefits to which Mr P was previously entitled under the scheme. The letter also stated:

Do I need to do anything?

- *Please read the policy document and satisfy yourself that the details are correct. You should keep it in a safe place as you may need to refer to it at a later date. If you find an error, please return it to me.*

And also said that if Mr P had any questions, he should call Aviva.

Mr P wasn't in fact entitled to any further benefits from his former employer's scheme. He'd transferred them out in May 2019.

Mr P told this service that he'd worked for a company for over 27 years and that it had changed hands five times with various changes to the pension schemes. And that he'd also worked for another employer for 10 years where he'd had various pension schemes. He said he'd asked a previous financial advisor to investigate all his existing pensions and to advise him on which pension he should move. But he didn't remember which ones had been transferred and which ones hadn't.

I do understand how difficult it can be to keep track of past pensions, especially where there are a number of former plans with the same employer. But I agree with our investigator that there's a duty on Mr P and his financial adviser to know which pensions were still in place. In this case, I consider that even if Mr P didn't know that the June 2021 letter from Aviva related to a pension which he'd transferred out, he could've asked his financial adviser to check. I understand that this was a relatively large transfer so I consider that Mr P and his adviser should've known that it had taken place.

Even if Mr P hadn't been sure which of his pensions he'd transferred, I consider that he could've looked into the information included in the June 2021 letter from Aviva in more detail before he'd decided to take it at face value and change his retirement plans. From what I've seen, the letter clearly said that Mr P should satisfy himself that the details the letter included were correct. It also said that Mr P should call Aviva if he had any questions.

Overall, although Aviva could also have carried out further checks before it wrote to Mr P about benefits he no longer had, I consider that Mr P should've been able to identify that the pension the June 2021 letter referenced had already been transferred out. Had he done so, he wouldn't have taken the £50,000 tax-free cash or had to change his retirement plans. Therefore I don't consider that Aviva should be held responsible for Mr P's decision to take £50,000 in tax-free cash from one of his other pensions. Or for the change to his retirement plans.

I'm also not persuaded that Mr P has suffered a financial loss. I say this because Mr P wasn't entitled to any further benefits from the pension scheme in question – he'd already taken them as a transfer out in May 2019. And because he told this service that he'd used most of the £50,000 he withdrew to carry out renovations on his house, buy a car and go on holiday. And that he planned to use the rest for further renovations. I've not seen any

evidence that Mr P didn't need to carry out the renovations. So I consider that he has benefited from the withdrawal.

Despite my belief that both Mr P and his financial adviser could reasonably have been expected to know whether the pension Aviva was writing to him about in June 2021 had been transferred or not, I am satisfied that Mr P's expectations were raised when he received that letter. And that Mr P would've been disappointed to find out that the information in the letter wasn't correct. I say this especially because he'd already made a tax-free cash withdrawal on the basis of the information in that letter. So I've gone on to consider what compensation Aviva should pay Mr P for the distress and inconvenience its June 2021 letter caused him.

Distress and inconvenience

I can see that the information in the June 2021 letter led Mr P to believe that he would receive more pension than he'd previously been expecting. And that he then made an irreversible tax-free withdrawal from another pension just over two weeks after receiving that letter. So I can see that Mr P's expectations were raised by the information Aviva sent. I can also see that it would've been distressing to find out he wasn't actually entitled to any extra pension. Mr P has also told this service that he had to change his retirement plans.

As I noted earlier, I can't fairly ask Aviva to honour the error it made. But I can ask it to compensate Mr P for the distress and inconvenience the error caused. From what I've seen, there were around four months when Mr P was expecting to receive a greater pension. Overall, I agree with our investigator that £400 compensation is reasonable under the circumstances here.

Based on everything I've seen, I'm satisfied that Mr P hasn't lost out financially due to Aviva's error. But I uphold the complaint, as I also consider that Aviva's error caused Mr P a loss of expectation. I consider that £400 compensation for the distress and inconvenience the error caused is fair and reasonable under the circumstances.

Putting things right

I require Aviva Life Services UK Limited to pay Mr P £400 compensation for the distress and inconvenience caused. If it's already paid this amount, it need take no further action.

My final decision

For the reasons given above, I uphold the complaint. I require Aviva Life Services UK Limited to take the steps outlined in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 February 2023.

Jo Occleshaw
Ombudsman