

## **The complaint**

Mr W complained that in 2002 he was underpaid a terminal bonus by Aviva Life & Pensions UK Limited (when it was trading as AXA Sun Life) and he is unhappy with the amount Aviva has paid by way of redress.

## **What happened**

In 2017, Aviva took over administration of Mr W's AXA Sun Life With-Profit policy.

It identified a number of customers who had held 'With Profits' policies where the terminal bonus was miscalculated. This included Mr W.

On 23 June 2021, Aviva sent Mr W a letter informing him that when his AXA Sun Life policy came to an end on 5 August 2002 his terminal bonus had been underpaid. The letter also included a cheque for £100.30 to correct this error.

On 2 July 2021, Mr W told Aviva he didn't agree its calculations. He said the underpayment in 2002 had been £64.29 and, after adjustment for inflation, the equivalent amount Aviva should pay him for this was over £100. And he didn't agree with the interest applied.

On 8 July 2021, Aviva sent a final response letter explaining why it didn't uphold his complaint.

This prompted Mr W to bring his complaint to the Financial Ombudsman Service. One of our investigators looked into what happened.

Our investigator upheld Mr W's complaint. Based on the information she was provided with, she thought that the £100.30 Aviva sent to Mr W had been made up as follows:

- £55.29 - the amount he was underpaid by
- £45.01 - gross interest
- less £9.00 - income tax.

She felt that whilst the redress of £55.29 for the underpayment was fair, interest hadn't been paid in line with her expectations. She suggested that 8% simple interest per year would be more appropriate to reflect the cost to Mr W of having been deprived of the underpayment.

She said Aviva hadn't done anything wrong when it made a tax deduction of £9.00 as it was required by law to deduct income tax at the lower rate from this interest and pay it to HMRC. But she felt it was fair and reasonable to recommend that Aviva should pay Mr W £50 for the distress and inconvenience of having to contact HMRC regarding the tax.

Aviva initially confirmed that it would accept our investigator's view and arrange for the additional payments to be made once it received a final determination.

Mr W didn't agree with our investigator's view. He stood by his original complaint to Aviva – amongst other things, he was certain that the underpayment hadn't been properly calculated.

When our investigator followed this up with Aviva, it agreed that Mr W had been right to dispute the calculation and said that its actuarial team had supplied incorrect figures. It agreed that, as Mr W had said, he had been underpaid by £64.29 (not £55.29). It said that 8% interest on this figure, as recommended by our investigator, to cover the period from 5 August 2002 (the date of termination of his policy) up to 23 June 2021 (when the cheque was issued) worked out at £161.69.

It sent its new calculation:

*“Once you deduct what has already been paid = £161.69 - £100.30 - £9.00 = £52.39  
Rolled up from 23 June 2021 to March 2022 = £55.48 (gross)”*

Aviva told our investigator that as 8% interest had been rolled up to the date of payment, it now didn't feel any trouble and upset payment was due.

Mr W didn't feel this was satisfactory. He pointed to the fact that Aviva had provided incorrect figures to the Ombudsman, which he said served to underline the inefficiency with which it had dealt with the matter and he asked me to take this into account when making my decision.

He said the main reason for his complaint was that the original amount owed in 2002 was £64.29 and so Aviva should take inflation into account and pay him an equivalent amount at today's value - plus loss of interest. He supplied Bank of England figures to support his calculations.

He also felt that £100 was a reasonable compensatory payment for the length of time taken to resolve an error made in 2002. He told us other financial businesses had volunteered compensatory payments in this region very quickly and without needing to involve the Financial Ombudsman Service.

The complaint came to me to decide. I issued a provisional decision.

### **What I said in my provisional decision**

Here are some of the main things I said.

“Mr W discussed a number of complaint issues with our investigator. But it seems to me that the crux of Mr W's complaint now turns on what it's fair and reasonable to expect Aviva to do to put things right given that:

- it's not in dispute that Aviva made a mistake when it underpaid Mr W a terminal bonus in 2002, and
- it's now been settled that the underpayment amount (leaving aside the question of interest and any deductions) was initially wrongly assessed and should have been recorded as £64.29 when calculating what Aviva owed Mr W.

So, whilst I've read and considered the whole file, like our investigator I will concentrate on what Aviva should do to put things right.

It's not entirely clear why Aviva chose to review terminal bonus payments and write to Mr W about the error it had found in 2021. I am mindful however that Aviva did not take responsibility for the administration of Mr W's policy until 2017, at which point it was 15 years since the policy had matured. I wouldn't necessarily have expected the terminal bonus error to have become evident to Aviva soon after it took on the policy's administration and therefore I don't consider this delay rectifying the situation is a reason for me to award compensation.

My focus is on what I think it's fair and reasonable to expect Aviva to have done, once it had identified this error.

Having spotted that Mr W was underpaid when he was sent his terminal bonus, Aviva seems to have acted reasonably promptly to locate and contact Mr W. It apologised for the error and sent him a cheque for an amount that reflected what it thought the underpayment had been plus interest worked out according to a benchmark it relied on. I think that was done in a genuine attempt to try and provide fair redress.

It's unfortunate that Aviva's original calculations were incorrect, based as they were on an error that resulted in the wrong underpayment figure. Whilst the resulting amount involved is just a few pounds difference, I can see that from Mr W's point of view, this has simply reinforced his loss of confidence in Aviva generally.

Our approach to redress is to try and put Mr W into the position he would have been in had the underpayment in 2002 not occurred. Of course, that's impossible to say with complete certainty – so the Ombudsman approach is to take an overview and settle cases on the basis of what is fair and reasonable.

Both Aviva and Mr W have their own view on what that means in practice. Mr W wants me to take into account inflation and base any award on an equivalent figure today for the amount £64.29 was worth in 2002 – plus interest. For its part, Aviva originally based its interest calculation on Bank of England base rate plus 1% (although it accepted our investigator's recommendation to pay simple interest at 8% per year when it re-worked its calculations).

With respect to both parties, whilst I can understand there is scope for taking different approaches, I am guided by the general approach taken by the Financial Ombudsman Service in situations like this.

I haven't been provided with enough information to be able to say precisely how the £64.29 underpayment impacted on Mr W or what he would have done with the money had he not been deprived of its use. So I can't identify any specific financial loss arising out of the opportunity Mr W lost to spend that money over the years.

In terms of interest, as our investigator explained in her view letter, the Ombudsman considers that an award of 8% simple interest on the amount unpaid is, broadly speaking, a fair and reasonable way to put Mr W back in the position he would have been in had the underpayment not occurred. This is to reflect the fact that Mr W has been deprived of the use of that money.

Aviva seems now to agree this approach. It's a different way of looking at things to the way Mr W prefers – but I think it's a fair and reasonable way to put things right for Mr W rather than using the inflationary measure he has suggested.

I don't think it would be fair to make an award reflecting both an inflationary correction as well as interest on top of that, as Mr W has asked me, since this would effectively amount to providing redress twice over.

As far as I am aware, Aviva hasn't paid anything more to Mr W since showing us its recalculation of interest at 8% on the correct amount of underpayment as it has not accepted our investigator's overall proposed resolution. If that's right, to be clear, I think it's fair that Aviva should pay interest up to the point this complaint is settled. This reflects the fact that Mr W has still been deprived of the use of money that should have been paid to him at an earlier date.

I think Aviva's unwillingness to pay any award for non-financial loss fails to acknowledge just how frustrating this whole experience has been from Mr W's point of view. Our investigator recommended Aviva should pay £50 to Mr W to reflect the distress and inconvenience he was put to when he needed to contact HMRC regarding the tax deduction Aviva had made – which was based on an incorrect underpayment figure. That seems fair to me.

I also think that Aviva should've done things better once it had established that it owed Mr W money – whilst an actuarial mistake made when calculating the underpayment might be understandable, it was only Mr W's persistence that led to the error ultimately being acknowledged.

Had Aviva followed up his concerns sooner, I think it's likely the error would've been identified earlier.

I think that a further award of £50 for the trouble he was put to in order to get this corrected is fair compensation in all the circumstances.

I'm aware that Mr W has mentioned a number of other points of concern during the course of this complaint. I have concentrated on what I consider to be the main issues that affect the outcome of his complaint. If I haven't commented on everything Mr W has said during the course of this complaint, that's because I don't feel there's anything more I can usefully add to what has already been said by the investigator."

### **What the parties said in response to my provisional decision**

Mr W has sent some further comments and confirmed that he accepts my provisional decision.

I have heard nothing further from Aviva and the deadline for responses has now passed so I think it's reasonable for me to proceed with my review of this complaint.

### **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.

We've set out our approach to dealing with complaints on our website and I've kept this in mind while deciding this complaint.

I'd like to thank both parties for all the information that has been provided about this matter and Mr W for responding to my provisional decision. Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

### **Putting things right**

Aviva should do the following and work out redress as follows:

- refund the £64.29 underpayment (A)
- if it hasn't already paid Mr W 8% simple interest\* on this amount since it sent its revised calculation on 18 March 2022, it should work out and pay Mr W 8% simple interest on the £64.29 underpayment from 5 August 2002 (the policy termination date) up to the date of settlement of this complaint (B)
- set out its workings so Mr W can see how the calculations have been done
- pay Mr W £100 compensation (C)
- Aviva should total A + B + C, and it is then able to deduct the £100.30 cheque and any other payment sent to Mr W already. Aviva should pay any outstanding balance to him.

\*HMRC requires Aviva to deduct tax from this interest. ***Aviva should give Mr W a certificate showing how much tax has been deducted – Mr W has confirmed he requires this to be done.***

### **My final decision**

I uphold this complaint and direct Aviva Life & Pensions UK Limited to take the steps I've set out above to put things right for Mr W.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 October 2022.

Susan Webb  
**Ombudsman**