

The complaint

Miss J complains that Aviva Life & Pensions UK Limited are unfairly asking for payments of around £18,000 made to her in respect of her late father's pension to be repaid. In addition, correspondence relating to this issue has been sent to the wrong address despite Miss J updating Aviva with her new details, this has caused distress and family tension.

What happened

Since 2010 Miss J has been in receipt of income payments from her late father's annuity policy with Aviva. These payments were due to Miss J in her capacity as executor of her father's estate and based on the 10-year guarantee period which was included in the annuity policy when it was set up.

Documentation from that time confirms that the payments should have stopped in 2015 when this 10-year period ended. A letter issued to Mr L – the second executor of the estate - in January 2010 confirmed that the annuity payments would continue until January 2015. Payments mistakenly continued after 2015 with the last payment being made in January 2019.

On 19 July 2019 Aviva wrote to Miss J at her address stating that a payment issued to her late father had been returned by his bank and as such Aviva required a copy of his death certificate.

Following on from this on 9 January 2020, 10 February 2020 and 3 March 2020 Aviva sent letters to Miss J at her mother's address stating that an overpayment had been made and requesting repayment of around £18,000.

Having been provided with these letters by her mother, Miss J replied on 11 March 2020. This reply stated that despite updating her contact details, letters were still being sent to the wrong address and asked for further information about the overpayment issue before she could decide her approach to the repayment request. Aviva didn't respond to Miss J's letter.

On 24 September 2020 Aviva sent a further letter confirming that as no reply to their earlier letters had been received, Aviva may have to inform HMRC about the overpayments which could then be classed as unauthorised payments and result in tax charges being levied on the executors of the estate. This letter was again sent to the incorrect address.

Miss J received a letter – to the correct address - from a solicitor on 21 January 2021. This firm had been instructed by Aviva to recoup the monies owed.

Miss J's complaint was acknowledged in writing by Aviva on 26 January 2021 however this was again sent to the incorrect address.

Aviva's final response to the complaint was issued on 24 February 2021 with this being sent to Miss J's correct address. This accepted the March 2020 letter from Miss J requesting further information was not actioned properly and offered £250 to cover the trouble and upset caused. Aviva offered to deduct this from the amount owed. The letter also accepted that repayment of the funds via a lump sum was not expected and offered to arrange a

payment plan to facilitate the repayment of the outstanding monies. The letter did not refer to any issues regarding letters being sent to the wrong address.

Miss J did not accept this outcome and the issue was raised with this service.

Our investigator looked into the complaint points raised and concluded that in respect of the overpayment issue, Aviva's offer was fair. They said it was clear from the evidence on file that payments should have stopped in 2015 and as such Aviva were entitled to request these monies be repaid. The offer to put a payment plan in place to facilitate this was considered appropriate and the amount of £250 offered to compensate for not actioning Miss J's March 2020 letter was also considered reasonable.

The investigator also considered the issue around letters being sent incorrectly to Miss J's mother's address. They thought it was clear that these letters had been sent after Miss J had updated her contact details with Aviva and as such an additional amount of £350 was recommended to cover the trouble and upset caused. It was also stated that as the letters were a separate issue, this amount should be paid directly to Miss J rather than being deducted from any outstanding overpayment balance.

Miss J did not agree stating that she did not believe any amount should be repayable as any incorrect payments were solely Aviva's mistake. Miss J confirmed that she believed the whole amount should be written off.

To try and resolve the issue our investigator asked Aviva for a reply to Miss J's request. Aviva confirmed that writing the whole debt off was not considered appropriate as Aviva had a responsibility to other policy holders and shareholders to recoup the funds, however if Miss J was willing to undertake an income and expenditure calculation exercise to try and establish what level of repayment was affordable, they would be willing to write off £350 from the balance.

In addition, Aviva also stated that they considered the £350 awarded in respect of letters being sent to the incorrect address too high.

As no agreement was reached the case was passed to me. In October 2022 I issued my provision decision and explained why I was minded to uphold Miss J's complaint but did not believe the overpayment amount should be written off by Aviva.

My Provisional decision stated:

"Dealing firstly with the overpayment issue. I agree with the investigator in that the file is clear that the payments should have ceased in 2015. As such an amount has been paid to Miss J that should not have been.

I can appreciate Miss J's stance that as the overpayments were Aviva's error, she should not have to repay any of the money. However, I do not consider this to be fair. It is accepted that Aviva made an error, but I do not consider it reasonable that such an administrative error should cost Aviva, its other policy holders and shareholders over £18,000. Within this I have also noted that Miss J was told when the payments should end in 2012 and as such an argument could be made that Miss J herself should reasonably have been aware that overpayments were being made.

As such Aviva are entitled to seek repayment of the funds. I agree with both Aviva and the original investigator that seeking a lump sum repayment of the funds would be unfair and place an undue financial burden on Miss J, and as such Aviva's offer to put a repayment plan in place to allow the monies to be repaid over time is reasonable. In order to accomplish

this an assessment of Miss J's income and expenditure should be completed in order to accurately assess what level of payment is affordable.

As part of the discussions after the investigators' initial view, Aviva offered to write off £350 of the debt as part of the above assessment process. As a starting point I see no reason to disagree with this offer, however I would note that the income and expenditure assessment process itself should be used to establish what level of repayment is affordable and how much of the debt is actually recoverable.

Moving on to the £250 offer made by Aviva in respect of the issues caused by the incorrect handling of Miss J's letter sent in March 2020, I would again agree with the original investigator that this is reasonable. Miss J had clearly responded to Aviva's letters sent in January, February and March 2020, even though they were sent to the incorrect address. The fact this letter was missed led to a follow up letter noting the possible involvement of HMRC that would no doubt have been worrying to Miss J.

When considering what amount is reasonable to cover the trouble and upset caused by a particular business error, I have to consider the nature of the issue, whether this was an ongoing problem and whether the error itself has caused any other problems for the consumer. In this instance, whilst the missing of the March 2020 letter did result in further letters that should not have been sent, the ultimate outcome has not been affected and as such I consider the £250 amount to be fair. Given the March letter and subsequent correspondence from Aviva in September 2020 were specifically related to the overpayment issue I also consider it appropriate for the £250 to be deducted from the £18,000 outstanding amount.

Finally, I have gone on to consider the fact that numerous Aviva letters were sent incorrectly to Miss J's mother's address.

Our investigator stated that Aviva should pay £350 to Miss J to cover the trouble and upset this caused and that as this should be paid to Miss J rather than being deducted from the £18,000 as the sending of the letters to the incorrect address was a separate issue to the overpayment.

Initially Aviva stated that they did not believe an additional amount was appropriate as their initial £250 offer covered the trouble and upset caused.

However, this £250 offer was made in respect of the issues caused by their mismanagement of Miss J's letter in March 2020. Aviva's complaint response letter which detailed their offer made no mention of letters being sent to Miss J's mother's address incorrectly and made no offer in respect of this. As such I agree with the investigator's view to consider this issue separately.

In follow up communication Aviva have also commented that the £350 recommendation made by our investigator was a high award for the incorrect addressing of a letter and noted an award of £100-£150 is more common.

I however agree with the investigator. Any award made needs to factor in the unique circumstances of each case, not just that a letter was sent to the wrong address but what was the content of the letter and what impact has it had.

In this case the first thing to note is that the error was repeated several times despite Aviva being made aware of Miss J's new details. In addition, the letters themselves were of a sensitive nature, the information contained informed Miss J's mother of details she had not previously been aware of and led to a deterioration in the relationship between Miss J and her mother. Given the emotional impact and wider implications of the letters being sent to

the wrong address, I consider the amount recommended by the investigator to be appropriate.

I also agree that whilst the content of the letters related to the overpayment, the issues those letters have caused Miss J make it appropriate for the £350 to be paid directly to her, rather than be deducted from the £18,000.”

In my provision decision I asked both Miss J and Aviva to provide any further commentary or evidence they wanted me to consider before I made my final decision.

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.

Following the issuance of my provisional findings Miss J has not provided any additional evidence or commentary. Aviva have confirmed they are willing to accept what I have said.

As such I have concluded the provisional decision issued provides a fair and reasonable outcome to the issues at hand and as such, I am not making any changes to it.

Putting things right

As above – and in line with what was included within the provision decision - I consider the repayment of the circa £18,000 overpaid to Miss J to be a reasonable request and as such Miss J should undertake the income and expenditure assessment process to establish what level of repayment is affordable.

The £250 amount offered by Aviva Life & Pensions UK Limited to cover the issues created by their mismanagement of Miss J’s letter in March 2020 must be deducted from any outstanding balance.

The additional amount of £350 that Aviva Life & Pensions UK Limited offered to write off should Miss J undertake the income and expenditure assessment should be considered the minimum and not a definitive figure. It is outside the scope of this decision to establish what Miss J can and should repay. The outcome of income and expenditure assessment will establish what Miss J can repay and what level of the £18,000 is recoverable.

Regarding the letters sent to Miss J’s mother’s address in error, an amount of £350 must be paid by Aviva Life & Pensions UK Limited directly to Miss J.

My final decision

For the reasons documented I uphold Miss J’s complaint and require Aviva Life & Pensions UK Limited to put things right in the way documented above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss J to accept or reject my decision before 12 January 2023.

John Rogowski
Ombudsman