

## The complaint

Mrs P complains that Aviva Life & Pensions UK Limited didn't comply with her instructions when she took benefits under her personal pension policy.

## What happened

Mrs P had a 'Guernsey GA Personal Pension' policy with General Accident Life Services Limited (GA). GA is now part of Aviva and it is Aviva that is required to deal with this complaint. I shall refer to Aviva throughout this decision.

In 2021, Mrs P decided to take early retirement. She was in contact with her financial adviser at the time but she says Aviva wouldn't let her financial adviser transfer the policy to a UK based policy - and for that reason she was left to deal with everything herself.

She received a retirement pack from Aviva. This included various options. Mrs P selected one of the options and returned the forms to Aviva on 1 March 2021. She says she wasn't happy with the options on the list because none of them suited her. She heard nothing further and so she contacted Aviva on 15 March. It said it hadn't received her forms. It emailed new forms to her which she completed and returned to Aviva the same day.

Mrs P didn't tick any of the options on the new forms. Instead she entered a hand-written instruction which said:

*"I would like 10% tax free lump sum to be paid by 24 March 2021. As from April 24 2021, a monthly tax free income of £900 ongoing until I die."*

She also included a covering letter in which she reiterated that she wanted 10% tax free cash to be paid in March 2021 and then a monthly income of £900 starting in April 2021 – all tax free. She also said she was no longer receiving financial advice and so was "completely in the hands of Aviva."

There were further delays caused because Aviva held an incorrect National Insurance number for Mrs P on its systems. Mrs P was in contact with it during this time and although it agreed to call her back it didn't do that.

Aviva made a payment of the 10% tax free lump sum (£13,399.28) into Mrs P's bank account on 21 April. On 10 May 2021 it sent Mrs P a further letter to say that it had used the rest of the money in her pension policy to purchase an annuity for her. It said the amount she'd receive each month for the rest of her life would be £371.16 (gross) per month (guaranteed for 5 years). The pension amount was static.

Mrs P complained to Aviva. It investigated her complaint. It said that when she returned the forms to it at the start of March 2021, she'd ticked an option to take 25% of her policy as a tax free lump sum. The figures quoted for the option she ticked were a tax free lump sum of

£40,018.67 and a single life annuity of £2,972.64 per year. It said it had complied with her request to reduce the tax free cash amount to 10%, and as a result the annuity amount was increased to £4,453.92 per year. Aviva said it wasn't possible for it to arrange an annuity of £900 per month. It also said that tax would be deducted from the annuity depending on the tax code advised to it by HMRC.

Aviva acknowledged there'd been delays and it hadn't called her back after it said it would. It offered to pay her £150 by way of apology for this.

Mrs P wasn't satisfied with this response. She referred her complaint to our service. She said Aviva hadn't allowed her financial adviser to transfer her policy to a UK based arrangement and this meant she'd had to deal with everything herself. Aviva had ignored her specific instructions and railroaded her into making choices which, with the correct advice, she said she wouldn't have made.

Our investigator looked into her complaint. He thought Aviva hadn't done enough to make Mrs P aware of all her options – in particular the option to transfer her policy to another provider willing to accept her plan, which might also have enabled her to avail of a drawdown arrangement. He said Aviva had accepted the changed instruction in Mrs P's letter dated 15 March 2021 and had paid her a tax free cash sum of 10% but it had ignored her request for a guaranteed monthly pension of £900 tax free. He thought it should have communicated to Mrs P that this wasn't possible or reiterated to her that she might want to consider whether a drawdown option might be available.

Before issuing his view our investigator spoke to Aviva to let it know how he thought the complaint should be resolved. Aviva didn't accept it had done anything wrong. It said the annuity had been set up in line with the option Mrs P had ticked on its form. It also said her policy didn't allow for drawdown and this option hadn't been mentioned in its retirement pack.

Our investigator thought about what Aviva had said but he didn't change his view. He noted that drawdown had been mentioned in the retirement pack and the policy provisions did permit Mrs P to transfer it to another provider.

He thought that in order to resolve the complaint Aviva should unwind the annuity and reinstate the pension into a plan that would allow Mrs P to avail of a drawdown option, should she wish to access that option. He said that the policy should be reinstated at the same value as the date when Mrs P's benefits had been crystallised less any tax free cash and annuity payments which she'd received.

Our investigator also considered the distress and inconvenience Mrs P had experienced as a result of the delays and the failure to call her back. He noted that Aviva had offered to pay her £150 to compensate her. He thought this was fair and reasonable.

Mrs P accepted what our investigator had said. As Aviva didn't respond within the given deadline, the complaint was passed to me for a decision.

Aviva responded to what our investigator said. Aviva said:

- Mrs P's policy did not include a flexible drawdown option;
- Under Guernsey law (which is the law which applied to the policy) there is no explicit provision which permits policy funds to be used for any other purpose

once an annuity contract has been purchased. So the annuity policy Mrs P has could only be unwound if the Director of Income Tax in Guernsey approved such action. This means the resolution proposed by the investigator might not be feasible.

- Aviva could not provide flexi-access drawdown on its platform for funds from a Guernsey policy.
- The only options open to Mrs P, under the terms of her policy, when she decided to retire were tax free cash and a life annuity. There was no option for a fixed term annuity or flexible drawdown.

I issued a provisional decision in which I said

***What I've provisionally 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 considered the instructions Mrs P provided to Aviva and in particular the amended instructions she sent to it under cover of her letter dated 15 March 2021. Having done so, I'm currently not persuaded Aviva has acted fairly and reasonably here. I'll explain why.*

*In her letter dated 15 March, Mrs P made several points which I think should've alerted Aviva to the fact that she was not making a fully informed choice and did not understand the implications of the choices she had ticked. For example she said:*

*"I would like a monthly income of £900 to be paid starting April.... All tax free."*

*This statement indicated that she thought it would be possible to achieve an annual annuity, for the rest of her life, equating to £10,800 per annum, tax free. Aviva would have known that this was an expectation that could not be achieved given the value of her pension pot. If Mrs P required an income of £900 per month, Aviva should have explained to her that that could not be achieved by way of a guaranteed annuity for the rest of her life.*

*She also said:*

*"Bearing in mind that I will still have use of 15% tax free as I am entitled to 25% tax free and only require 10% tax free."*

*This statement indicated that Mrs P misunderstood certain factual matters. Her pension policy was unusual in that she would have been permitted to take up to 30% tax free cash – and not 25%. Secondly, once she had taken a 10% tax free amount of cash, the balance in her pension would be used to purchase an annuity and any future payments would be subject to income tax, in line with the tax thresholds that applied to her.*

*Mrs P was making important decisions that would impact on her financial wellbeing for the rest of her life. She had explained in her letter that this would be her "only income" – so Aviva ought to have known that it was important she fully understood the choices she made.*

*In her letter she also said she was no longer receiving financial advice and was “completely in the hands of Aviva.” Although this information differed from an answer she provided on the form itself, given the contents of the rest of the letter, I’m satisfied, on balance, it should have alerted Aviva to the fact that Mrs P was not making a fully informed decision.*

*I agree that Aviva wasn’t required to provide advice to Mrs P. It could have made that clear to her, after receipt of her letter of 15 March and it could have sign-posted her to organisations that could provide her with guidance before she made these very important decisions.*

*If Aviva had provided Mrs P with additional information, in response to what she’d said in her letter and referred her to one of the organisations that assists consumers when making decisions about their retirement, I think Mrs P would’ve been able to make a fully informed decision. That doesn’t mean, however, she would’ve been able to achieve what she wanted.*

*As I mentioned above, her pension pot would not have enabled her to purchase a lifetime annuity of £900 per month.*

*Aviva has now provided more detailed information about the nature of Mrs P’s policy and it is the case that there were certain features of the policy which restricted how she could take the benefits, including:*

- It did not include an option for flexi access drawdown and it did not include an option to purchase a fixed term annuity;*
- Aviva did not accept transfers into any of its UK personal pension policies from a pension policy held in Guernsey; and*
- Mrs P could transfer the benefits to another UK provider but only if that provider was willing to accept a transfer in.*

*Mrs P says she initially asked a financial adviser to assist her with this matter but the adviser told her Aviva wouldn’t allow him to deal with the policy. Because of that she says she had to deal with Aviva herself. Aviva says it was contacted by Mrs P’s adviser and I can see that, in February 2021, it provided details about the policy to the adviser. It also sent information to Mrs P at that time. So, I’m satisfied Aviva was prepared to deal with Mrs P’s adviser and did provide information to him.*

*Having considered everything I think, on balance, it’s likely the adviser reviewed the information about Mrs P’s policy and concluded it wouldn’t be possible to transfer the benefits to a UK policy. There is some indication on the file that Mrs P told Aviva during a telephone conversation in March that her adviser informed her there was no UK company he was aware of that would accept a transfer in from a Guernsey plan. In those circumstances it’s likely that the adviser decided there was no need for him to be further involved and Mrs P could deal directly with Aviva herself.*

*Mrs P told us she was anxious to get the benefits paid to her as quickly as possible, given her circumstances. That is supported by the fact she contacted Aviva several times to check on progress after she submitted her “Choices” form.*

*Having thought about everything here, given the time constraints and the information she received from her adviser about the difficulty of finding a UK provider that would accept a transfer in, I've provisionally decided, on balance of probability, it is unlikely Mrs P would've decided to pursue that option or possibly not even have been able to. And, in those circumstances, her only options were to take a mixture of tax free cash (up to 30% of the value of her policy) with the remainder taken as a life-time annuity. Mrs P does appear to have considered what combination of tax free cash and annuity payment she wanted. Aviva complied with her request for 10% tax free cash. The difficulty was that Mrs P couldn't get a life-time annuity payment of the amount she'd hoped for – the value of her pension fund simply didn't support this level of payment.*

*So, I think that even if Aviva had provided her with more information and had made it clearer that the option she wanted wasn't available, she likely would have ended up with the annuity she has got now. And, in these circumstances, I don't think it's reasonable to unwind the annuity now.*

*I have considered the distress and inconvenience Mrs P experienced here. In her complaint Mrs P raised issues about the service she'd received from Aviva. She complained that Aviva had failed to call her back after saying it would. She also complained about delays she'd experienced when Aviva hadn't recorded her National Insurance Number correctly on its records.*

*Aviva has accepted there were service failings but explained that some of these issues were caused by lockdown rules which applied due to the coronavirus pandemic. It offered to pay Mrs P £150 by way of apology.*

*Having considered everything, I'm not satisfied with the explanations Aviva has given for its service failings. As mentioned above Mrs P contacted it several times to check the progress of her claim. She was given timescales about when she could expect to receive payment - which proved to be incorrect.*

*It was important that Aviva should provide clear information to Mrs P. Aviva knew, or ought to have known, after it received her letter of 15 March that Mrs P didn't understand the information it had provided. In these circumstances, Aviva should have taken appropriate steps, despite issues created by lockdown rules, to contact Mrs P to clarify her instructions and explain she couldn't get a lifetime annuity payment of the amount she sought. It is only recently that Aviva has provided fuller explanations about the restrictive features of the policy to our service – and after our investigator had issued his view. It should have done that much earlier in the process.*

*Mrs P has told us about the distress and worry she experienced when she didn't get payments in line with the timescales Aviva had provided. Having listened to the calls she had with Aviva it's clear she was getting more and more desperate to receive her money. And she wasn't given clear information. Having taken everything into account I don't think the offer to pay Mrs P £150 is adequate. I've provisionally decided that to recognise the impact of its poor service, Aviva should pay Mrs P £400 by way of compensation.*

## Responses to my provisional decision

Mrs P responded to my provisional decision. She asked for further clarity about what the provisional decision would mean for her. She said she knew her fund wasn't enough to last her until the end of her life but she thought that the amount she'd stipulated would have lasted about nine or ten years. She said it was her money after all.

Aviva also responded. It accepted the provisional decision. It explained it had already paid Mrs P £150 pursuant to the offer it had made.

Our service wrote to Mrs P to provide her with further clarifications as requested and explained to her that the amount of compensation set out in the provisional decision had not taken account of the fact that Aviva had already paid her £150 for distress and inconvenience in May 2021. This meant that Aviva would be required to pay only a further amount of £250 (£400 in total).

Mrs P provided a further response to say that she felt "completely let down." She thought Aviva was perfectly capable of sorting the matter out and should be able to transfer her policy back from Guernsey. She acknowledged that she had already received £150.

## 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 considered the responses to my provisional decision. As set out above Aviva has provided evidence that it has already paid Mrs P £150 pursuant to its offer to do so and Mrs P has confirmed that this is the case. In my provisional decision I had indicated that I thought Aviva needed to pay more than it had already offered. I thought it should pay her £400. That was a total payment for distress and inconvenience. As it has already paid £150, it should now pay her the balance amount of £250 (being £400 in total).

In her response to my provisional decision, Mrs P made reference to that fact that she knew her fund wasn't enough to last her until the end of her life. I've thought about what she's said here and I've looked again at her handwritten letter dated 15 March

In that letter Mrs P said:

*"I would like 10% tax free lump sum to be paid by 24 March 2021. As from April 24 2021, a monthly tax free income of £900 ongoing until I die."*  
(my underlining added for emphasis)

So, I think this made clear she did expect to be paid a monthly income of £900 until she died.

I explained in my provisional decision that the nature of Mrs P's policy was such that she had limited options. It did not permit a flexi access arrangement and it didn't permit an annuity to be paid for a fixed period of time – it only permitted lifetime annuities.

I've also explained in my provisional decision why I think given the time constraints and the fact that Aviva didn't accept transfers into any of its UK arrangements from Guernsey it's likely, on balance, Mrs P would still have ended up with the annuity she now has. I understand why Mrs P might take the view that Aviva should have been willing to transfer her policy from Guernsey to the UK – but Aviva has explained that it didn't accept transfers

into any of its UK arrangements from Guernsey. That is a matter which is within its own commercial judgement and I'm satisfied it's not treating Mrs P differently from any of its other policy holders who have a Guernsey policy. So, although I know it will disappoint Mrs P, I'm not persuaded she has been treated unfairly or unreasonably here.

Apart from the information about the payment of £150, I haven't received any new or further information which causes me to change my view about how this complaint should be resolved.

### **My final decision**

For the reasons given above I uphold this complaint about Aviva Life & Pensions UK Limited. I now require it to take the following actions:

- Pay Mrs P £400 (in total) by way of compensation for the distress and inconvenience she experienced as a result of what happened here. As Aviva has already paid Mrs P £150, that means it should now pay her the difference of £250.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 6 March 2023.

Irene Martin  
**Ombudsman**