

The complaint

Miss W complains that Aviva Life & Pensions UK Limited (Aviva) caused unnecessary delays in administering her request to take her 25% tax free Pension Commencement Lump Sum (PCLS) from her personal pension, and further delays in the transfer of the remaining funds into an alternative plan. Miss W complains that these delays have caused her a financial loss and significant distress.

Miss W is represented in this complaint by a professional body who are also her financial advisers. However, for clarity, I shall refer to all actions and communications as being made by Miss W herself.

What happened

Miss W had a personal pension with Aviva. In March 2021 Miss W wrote to Aviva and informed it that she was planning to retire and wished to access her PCLS. She also said she wanted to leave the remaining funds in income drawdown. In response Aviva sent Miss W some information about her funds and what she could do.

In May 2021 Aviva provided Miss W with the information packs she would need to complete in order to initiate the PCLS process. But at that time Miss W wasn't ready to start the process. She planned to move to Spain at the end of 2021 and wanted to ensure she had everything organised in order to meet this deadline. Having sought financial advice Miss W understood that the PCLS, whilst being tax-free in the UK, had to be paid to her by the end of the 2021 calendar year to ensure it wouldn't be subject to taxation by the Spanish authorities.

On 10 November 2021 Miss W completed all the paperwork she thought was necessary and this was sent to Aviva by courier. The cover letter said she was moving to Spain so it was imperative she took the maximum PCLS available and that the remainder would eventually be transferred into a Qualifying Recognised Overseas Pension Scheme (QROPS).

However Aviva emailed Miss W on 24 November 2021 as it thought she may exceed her Lifetime Allowance (LTA) and be subject to a tax charge when she went into drawdown, so a new PCLS quotation was needed. On 1 December 2021 Miss W completed a LTA questionnaire and this, along with further information from her IFA was sent to Aviva. However there was an error in the policy number she'd completed, so she sent a correctly completed version to Aviva on 6 December 2021.

There followed a number of chase emails to Aviva as the end-of-year deadline was approaching. Aviva said a new quotation was being prepared, but this did not arrive as promised, and Miss W complained to Aviva on 15 January 2022. She said the delay in providing her the quote meant she would be liable to taxation by the Spanish authorities, and submitted a claim for £73,379 to cover her losses.

Aviva issued its retirement quote to Miss W on 18 January 2022 and provided a further breakdown of its calculations on Miss W's request the following day.

Aviva sent Miss W its final response to her complaint on 4 February 2022. It recognised there had been delays in providing her retirement quote, and it ought to have been able to do this by 13 December 2021. It said the delays were due to Covid and staff absences. It said if Miss W wished to proceed with taking the PCLS in the next 30 days it would look to cover any losses the delays had caused. It also offered Miss W £250 for the trouble and upset she had been caused.

On 21 March 2022 Aviva emailed Miss W to ask if she wanted to proceed with taking the PCLS and transfer to the QROPS. She replied the same day instructing them to continue.

On 20 April 2022 Aviva confirmed to Miss W that it had made the PCLS payment of £109,546.21 but the QROPS transfer was still pending. Miss W made a second complaint to Aviva on 16 May 2022 regarding the delay in the PCLS payment and the ongoing delays in the QROPS transfer.

As Miss W had received no response to her second complaint and was dissatisfied with how Aviva had handled things, she complained to our Service,

Aviva responded to Miss W's complaint of 16 May 2022 on 22 June 2022. It said the PCLS payment was made on 20 April 2022 with an effective date of 21 March 2022 – the day she instructed it to proceed. It said it had completed a calculation to see if she had lost any value in the PCLS due to the delays using a hypothetical calculation date of 16 February 2022. It said this was the date it ought to have been able to complete the PCLS claim. It said this showed it needed to pay Miss W an additional £19,122.11 in tax-free cash as this represented the extra amount she would have received in February 2022. It also offered £200 compensation to say sorry. Aviva then addressed the complaint about the delays to the QROPS transfer. It said it had worked out that it ought to have been able to complete the transfer on 2 March 2022 when it would have been worth £374,887.44. It said she had 30 days in which to accept this value.

The transfer process went ahead on these terms, and on 1 September 2022 Aviva notified Miss W that the funds had been transferred into her QROPS, but it was discovered that there had been an error in the way Aviva had made the transfer, so the funds did not arrive.

On 3 October 2022 Aviva made the payment again, but again made an error so the payment was not completed. The funds were not correctly received by Miss W until 28 October 2022.

Aviva completed its complaints process, sending Miss W its third response letter on 1 December 2022. It said the additional £19,122.11 it had given Miss W was a 'compensation' payment, and as such did not affect her LTA or mean she would be subjected to an HMRC tax-charge on this amount. It said it had also carried out a calculation to see if the transfer value of her pension when it transferred into her QROPS was less than what it would have been on 2 March 2022 – the hypothetical date it said it ought to have been able to make the transfer. And having done so it found her fund was actually worth more as a result of the delay, so there was no loss. But it did offer Miss W a further £750 compensation for the further trouble and upset she had been caused.

But Miss W remained unhappy with the outcomes of her complaints so asked our Service to conduct a review. She said she had delayed selling her home in the UK as a result of Aviva not paying her the PCLS in 2021, so had incurred additional utility and household bills. In order to settle the complaint, she said Aviva needed to do the following:

- Pay her tax adviser fees (€387.20);
- Pay her £2,989.77 for the additional UK home utility bills;

- Recalculate the redress to reflect the plan value had the PCLS payment been completed on 13 December 2021;
- Pay £59,262.49 for the Spanish tax liability the delays meant she would incur; and
- Increase the distress compensation figure.

An Investigator at our Service considered everything that had happened and concluded that he didn't think Aviva had been fair in either its calculation methodology or compensation offer. He thought, in summary:

- Aviva ought to have been able to make the PCLS payment to Miss W by 31 December 2021, so a new comparison should be made between the PCLS value on 31 December 2021 (when it ought to have been paid) and 20 April 2022 (when it was paid). Should this calculation show a difference greater than the £19,122.11 it had previously paid her, the difference should be paid to Miss W;
- Aviva should add 8% simple interest to the PCLS payment (and the additional compensatory payments) calculated from 31 December 2021 to the date they were actually paid.
- It would not be fair to say Aviva was liable for the additional utility bills for Miss W's home in the UK, as these bills were not in Miss W's name (they were in the name of Miss W's civil partner's name). He could not ask Aviva to compensate Miss W for something which she was not responsible for paying.
- There was no evidence to show that the house sale or Miss W's move to Spain had been delayed due to the errors made by Aviva.
- Should Miss W incur a tax-charge from the Spanish tax authorities on the compensation paid for the late PCLS payment, it would be fair for Aviva to consider paying for this, on receipt of suitable documentary proof of the payment of a tax-charge and the reasons for it.
- The claim for £59,262.49 was for a hypothetical tax bill that Miss W thought she may incur from the Spanish tax authorities. He was unable to say Aviva ought to pay this, nor the associated tax adviser fees amount as no tax liability had actually occurred. And if it did occur in the future it may be more, or it may be less.
- The dates used in the loss calculation on the QROPS transfer should be amended. The start date should be 4 January 2022, and not 2 March 2022, which Aviva previously used. The transfer values on 4 January 2022 and 27 October 2022 should be compared, and if there is a loss identified Miss W should be compensated for this.
- Aviva's total offer of £1,200 over the three complaint responses was insufficient to reflect the significant distress the problems had caused Miss W. He thought a total of £1,800 was more appropriate.

Aviva accepted the Investigator's outcome in full, but Miss W didn't. She said, in summary:

- Spanish tax authorities work one year behind. So any tax liability on the PCLS and compensation payments made to her in 2022 would only arise in 2023, and it is only fair that Aviva meet this future liability along with her tax-adviser charge.
- Although the UK house utility bills were in her partner's name, they had been civil partners for 12 years.
- It was impossible to make firm plans at the end of 2021 given the problems Aviva had caused, but she would have left the UK as soon as the PCLS payment had been made. It is fair to say that there had been an additional six months of utility bills as

the sale of their house had to be delayed, so Aviva ought to cover these.

- The suggested additional £600 payment for the distress and inconvenience she'd been caused was an insult and did not follow our Service's guidance. A payment of a total of £5,000 was more appropriate, although nothing could put right and help her get over the detrimental effects the last 12 months had had on her and her family.

Our Investigator responded to say that should Miss W incur a tax-charge from the Spanish authorities, she should provide evidence to Aviva of how this charge was attributable to its delays. But this could only be done once this was finalised by the Spanish tax authorities. And the same went for her tax adviser fees – if a financial loss occurs and she can provide evidence of this loss, and that Aviva were responsible for it due to its delays, then Aviva would be liable for making good this loss. Our Investigator also made this point to Aviva but it hasn't responded further.

Our Investigator didn't agree that the household bills should be refunded. He said that whilst appreciating they were in a civil partnership, he could only recommend repayment of the bills to the person in whose name they are, and only if they were the complainant in this case. And in any case, he thought he was unable to say these bills were a direct result of Aviva's delays, and he was unable to determine when Miss W would likely have moved to Spain had everything gone to plan.

And having reconsidered what had happened and the effect this had had on Miss W, he wasn't minded to increase the total amount of compensation.

As no agreement could be reached the matter has come to me for a 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.

Miss W has made a number of detailed points and provided a lot of evidence, and I have looked at it all. We're an informal dispute resolution service, set up as a free alternative to the courts. In deciding this complaint I've focussed on what I consider to be the heart of the matter, rather than commenting on every issue in turn. This isn't intended as a discourtesy to Miss W. Rather it reflects the informal nature of our service, its remit and my role in it.

Aviva has accepted, in full, the outcome recommended by our Investigator. And Miss W, whilst reasserting that Aviva ought to be responsible for any future Spanish tax-charge she incurs, has disagreed with his view that Aviva should not be required to repay the UK household bills Miss W has asked for. She has also strongly argued that the compensation for the distress and inconvenience she's been caused should be higher. So it is these points which I will focus on in this decision.

Future Spanish tax-charges.

Miss W told Aviva that she needed the PCLS payment to be made before the end of the 2021 calendar year or she may be subject to a tax-charge by the Spanish tax authorities. And Aviva has accepted that it ought to have been able to complete the PCLS payment within these timescales. I am not an expert on taxation, nor is it my role, especially when it relates to non-UK rules, but Miss W has asserted that she has received some advice and believes that the PCLS payments Aviva made in 2022, whilst they would have been tax-free in the UK, will be taxed in Spain. So I agree that should this happen, then Miss W will have suffered a financial loss caused by Aviva's delays. But I agree with the Investigator that it would not be fair to require Aviva to pay the amount that Miss W (and her tax adviser) have

estimated, because it is just that – an estimation. Nobody can be sure a tax-charge will even be imposed, let alone how much it will be. But should Miss W find that the PCLS payment (or any other compensation payment) made in 2022 is taxed by the Spanish authorities, then I agree that Aviva should, if provided with evidence to show both the amount she has to pay, and that this was triggered by the PCLS (or other compensation) payment, make a payment to reflect any tax she has paid (but would not otherwise have paid) to Miss W. But I don't think this should be an open-ended requirement. Miss W has said the Spanish tax authorities work one year behind, so any liabilities arising from 2022 would be calculated in 2023. And I think a further six months is a fair amount of time for Miss W to receive any tax demand and to collate and submit her evidence to Aviva. So I consider it fair to say this ought to be done by 30 June 2024.

The UK household bills.

Miss W and her civil partner had a home in the UK. Miss W has asserted that she would have put this house on the market and moved to Spain as soon as the PCLS payment was made in December 2021. But the house wasn't marketed until April 2022 and not sold until later in the year, and this was due to the delays caused by Aviva. And so the additional utility bills over six months should be paid for by Aviva. But I don't agree. Whilst I accept that Miss W and her partner were in a civil partnership, the utility bills were in her partner's name, so Miss W was not actually responsible for paying them. I am only able to require Aviva to make good losses which have been incurred by Miss W, as she is the complainant in this case. The repayment of losses incurred by other people, however closely linked they are to Miss W, are outside of my remit and are not something I can require Aviva to do.

Even if I thought I was able to consider whether the payment of utility bills in another parties name is a relevant loss, I don't think it's likely I would conclude there's enough to say they ought to be paid here. Whilst I haven't concluded my thinking, I see that in November 2021 there was nothing to suggest the Aviva payments would be delayed and yet Miss W had not put her property on the market. Given the circumstances at the time, including the volatility linked to the Covid pandemic and the associated lockdowns, I consider it too speculative to say when a property might have been put up for sale, and when a buyer might have been identified and a sale completed. But as I say, here I don't think I can consider compensation where the liability was in someone else's name with nothing to demonstrate it caused Miss W direct loss, albeit I accept in general terms a bill will often be a shared household expense.

Compensation for distress and inconvenience.

Having looked closely at everything Miss W has said to Aviva over the course of these complaints, and also to our Service since we have been involved, I can see clearly the substantial negative impact on Miss W.. The tone of her communications has shown a clear transition from frustration, to disbelief, anger, anxiety and ultimately despair. Miss W felt that due to Aviva's mistakes, her retirement and permanent move to Spain had been put on hold with no resolution in sight. It should not be understated that Aviva were handling a large proportion of Miss W's retirement fund. And on two occasions Miss W thought these funds had been lost in the transfer process. So I can completely understand how all of this had a significant negative effect on her mental health and happiness.

But I think the total amount suggested by the Investigator is fair. I understand that Miss W will be disappointed by this as she feels the effect on her and her family warrants a much higher payment. But our awards tend to be modest, and follow the guidelines set out on our website, and the level of this award is towards the higher end level of where I think the circumstances sit.. So whilst I agree Miss W was caused significant distress over a prolonged period, she has ultimately been able to retire to Spain, and the transfer of her

pension funds has been completed, and as a result of this decision she will not have lost out financially. I do not in any way wish to downplay the very clear negative effect this long and drawn-out event has had on Miss W, but ultimately the effect of Aviva's errors are not irreversible, nor has there been any evidence of a long lasting ill effect on her health. So I'm satisfied that a total of £1,800 compensation for the distress and inconvenience she's been caused is fair and reasonable in the circumstances.

Putting things right

My aim is that Miss W should be put as closely as possible into the position she would probably now be in if the PCLS payment had been made on 31 December 2021, and the transfer of the remaining pension fund from Aviva to her QROPS had been conducted within a reasonable timeframe.

I require Aviva to conduct a loss calculation using the following methodology to establish if Miss W has incurred a financial loss. Aviva must:

- Complete a new loss calculation for the PCLS payment using the date it ought to have been paid – 31 December 2021 and compare this with the PCLS payment actually made. If Miss W is worse off than identified in the previous calculation which used the hypothetical date of 16 February 2022, then the difference should be paid to Miss W. If no further loss is identified then Aviva need do nothing further in this regard.
- Add 8% simple interest to the PCLS payment already made, calculated from 31 December 2021 to the actual date of payment.
- Should Miss W provide Aviva with evidence of Spanish taxation on the 2022 PCLS payment made, or on any further linked compensation payments stemming from this 2022 payment, up to 30 June 2024, Aviva should consider this evidence with a view to reimbursing the tax-charge(s) and the associated tax adviser fees (or relevant proportion) if applicable to ensure Miss W does not suffer consequential loss relating to the delays I've considered here.
- Complete a loss calculation for the QROPS transfer, comparing the value of the fund on the dates of 27 October 2022 and 4 January 2022. Should this indicate that the value of the QROPS has suffered a loss as a result, this amount should be paid to Miss W.
- Pay Miss W an additional £600 in compensation on top of what she has already been paid, bringing the total to £1,800 compensation for the distress and inconvenience she has been caused.

My final decision

I uphold this complaint. My decision is that Aviva Life & Pensions UK Limited should settle the complaint in the manner directed, and pay all amounts calculated in accordance with what is set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 25 August 2023.

Chris Riggs
Ombudsman