DRN-3994105

The complaint

Mr S complains that Aviva Life and Pensions UK Ltd delayed sending him information, meaning he was unable to access his pension before the end of the 2020/21 tax year.

What happened

Mr S first approached Aviva in 2020 to discuss accessing his pension. Following further exchanges at the beginning of 2021, Aviva said they'd send Mr S an Options Selection Pack (OSP). Aviva also confirmed Mr S' fund value - £15,308.59 - and advised him his policy with them had a Guaranteed Annuity Rate (GAR), and the minimum age to take GAR benefits was 60. Aviva told Mr S to expect the OSP by 17 February 2021 (although it seems it wasn't received until a week or so later). An OSP was also emailed to Mr S on 5 February 2021.

Mr S called Aviva to complain on 18 February 2021 – he was unhappy he hadn't yet received the OSP by post. A further copy was sent. These were also emailed to Mr S on 21 February 2021. Aviva offered Mr S £50 compensation for the delays. Mr S called Aviva two days later for assistance in completing them. Two further days later, Mr S again spoke to Aviva, unhappy he'd received two OSPs with only one containing a Personal Information Form (PIF) – which was necessary to complete and return if Mr S was to take a lifetime income option.

Aviva responded to Mr S' complaint on 1 March, acknowledging there'd been problems providing him with the OSP. But they said he was now in possession of the necessary documents and so minimal inconvenience had been caused – and £50 compensation already offered was sufficient.

Mr S returned the completed OSP and PIF forms the following day. He asked for retirement quotes to be sent. Mr S phoned to chase these up on 12 March and was told to expect them to arrive by 18 March. On 24 March, Mr S again phoned Aviva to chase the documents, to be told the documents hadn't been issued. A further complaint was raised about the delays, which Aviva upheld and offered a further £100 compensation.

Mr S was unhappy because the delays meant he was unable to take his pension in that tax year. He said he'd wanted to take the fund as one lump sum – he was self-employed, and his trading had been affected by the Covid lockdown. Taking the benefit in the following tax year meant he'd end up paying more tax. So, on 7 April, he chose to take a lifetime annuity.

Aviva responded to Mr S' latest complaint. They again acknowledged their delay in sending Mr S the further option documents (sent on 24 March rather than 18 March as promised), but said even had they sent it on time there wouldn't have been enough time to process his lifetime annuity request before the end of the tax year. Further, he only became eligible for his GAR 3 days before the end of the tax year (a bank holiday weekend). And that being so, its £150 compensation payments were fair.

Unhappy with this outcome, Mr S brought his complaint to us. He explained that it was always his intention to take the whole of his pension as one lump sum, and that Aviva's delays had prevented him from being able to do that in the most tax-efficient way.

One of our investigators considered Mr S' complaint but felt Aviva's compensation offer of £150 was sufficient. Whilst acknowledging Aviva's delays, our Investigator felt he hadn't seen enough evidence in the communications between Mr S and Aviva to show it was Mr S' intention to take the lump sum. The Investigator also thought once Mr S decided to take the annuity option there wasn't enough time left for this to be paid before the end of the tax year.

Mr S wasn't happy with this outcome. He reiterated that his retirement options were "*hampered by Aviva's failings"*. He asked for his complaint to be reviewed by an Ombudsman. Having considered Mr S' complaint, I reached a different conclusion to our Investigator, and issued a Provisional Decision (PD), in which I said as follows:

What I've provisionally decided – and why

Aviva admit they caused delays in the provision of information and forms to Mr S. But Aviva's response to this complaint is essentially based on there only having been one period of delay – between 18 and 24 March 2021 (the delay in sending the vesting quote documentation). Having looked very carefully at the information available to me, I think there were other small delays that need to be considered here. I'll explain.

Mr S approached Aviva on 25 January 2021, asking for an OSP to be sent. He was told he'd receive it by 17 February. This is 18 working days after the call, and is I think a fair timescale within which Aviva would have been expected to provide the OSP.

But it's clear from Aviva's copy phone notes there were some problems with this being sent (and received) on time. Mr S phoned Aviva in the interim, and it appears the OSP was emailed to him at his request (the notes suggest on 5 February). But it appears the posted documents weren't received until after Mr S phoned Aviva again on 18 February. And upon receipt of the 'first' set of OSP forms, and Mr S having spoken to Aviva on 23 February to seek assistance in completing them, it became clear the PIF form had been omitted. Aviva confirmed they did receive completed forms (including the PIF form) on 2 March 2021.

So, the first thing for me to consider is whether there were any avoidable delays caused by Aviva during the above period. And I think there were – and that it's fair to proceed on the basis Mr S should have received a complete set of OSP forms by 17 February – as I've said, I think 18 days was enough time to prepare the OSP forms and send them to Mr S.

That being so, I need to consider how long it would have then taken Mr S to review, digest their contents and return them. Mr S phoned Aviva to ask for assistance in completing them before returning his signed forms, and there's no reason to think this wouldn't also have happened if the complete set of OSP forms had arrived on time. So, I need to make some reasonable assumptions here. And I think it's fair and reasonable to assume if Mr S had received the forms on 17 February (Wednesday), he'd have needed time to consider them, call Aviva, and then sign and return the forms. So, I think it's reasonable to assume Aviva would likely have received the completed forms on Wednesday 24 February.

Aviva have already agreed it would have taken 12 working days from receipt of the OSP to calculate the information requested by Mr S, and send the results – the vesting quotes - to him (based on what did happen in this case – receiving the signed forms on 2 March and agreeing that the vesting quotes would be sent by 18 March). Applying that 12-day period to the 'what should have happened' timescale, means Aviva should have sent the vesting quotes on Friday 12 March – with Mr S likely receiving them the following day.

I now need to consider how long it would likely have taken Mr S to decide which option to choose (he'd been sent details for an annuity, lump sum, and fund transfer), and whether it *would have been possible to return the relevant forms in enough time for that choice to be processed before the end of the tax year.*

Deciding which choice I think Mr S would have made, had the OSP forms been sent on time, is important here. Both Aviva and our Investigator have assessed the complaint essentially on the basis Mr S was only interested in the annuity option – and this does appear to have been the only realistic option available after the OSP delays had occurred. But Mr S has said that taking the full lump sum (after tax) before the end of the 2020/21 tax year was always his preferred option. And I think, having considered the evidence available to me, the lump sum was Mr S' initially preferred choice, and I think he would most likely have chosen that option had it been feasible before the end of the tax year. I'll explain why.

I've listened to the call Mr S made to our service when he brought his complaint to us, and in this he twice mentions the lump sum option was always his preferred choice. I don't doubt his sentiments at the time of this call, but it's more important to consider what he told Aviva in the period after he first approached them to start the process of accessing his pension.

I'm aware Mr S phoned Aviva on various dates between January and March 2021, and I asked Aviva to provide some of these call recordings so I can understand exactly what Mr S said, but Aviva haven't done this. Instead I have copies of their internal call recording notes which record Aviva's summary of what was discussed. So I'll consider these, alongside letters Aviva sent to Mr S during this period, in reaching a conclusion on this point.

To begin with, there were various calls between 25 January and 23 February 2021. The phone notes for these record Aviva explained they'd need to undertake a manual calculation (because there was a GAR) before quotes could be provided, and how a GAR worked. They record Mr S asked how much his policy was worth and how much he'd get in retirement. They record he was unhappy he wasn't told in the 25 January call he could have had the OSP emailed to him (it then was, on 4 February) and hard copy forms still hadn't arrived in the post. And there is an apology by Aviva for the delays in sending these forms on time, and £50 compensation is offered and accepted. However, there is nothing in these notes making any reference to Mr S expressing a preference for a lump sum being taken.

The note from a call on 25 February, in which Mr S complains the first OSP Aviva sent didn't contain the PIF form, records Mr S' concern that this omission meant he could have ended up with reduced benefits. This may suggest – because the PIF form was really only relevant if Mr S was going to take an annuity – that this option was still being considered by Mr S at that time. Again, this call note makes no mention of the lump sum option. And a later phone note records Mr S asked for quotes for the lump sum, annuity, and whole-sum transfer options. This suggests Mr S was still thinking about which option to choose. And in a further call, the note records Mr S said he wanted payments to "start from 5th April 2021 to fall within the next tax year" (I'll assume the date should have read 6th April). Again, no record in the notes of the lump sum option being raised by Mr S or discussed, and the contents suggest all options appeared to be under consideration at that time.

But Aviva sent a letter to Mr S dated 24 March 2021, which began:

> *"Thank you for your recent enquiry about taking your retirement benefits as a lump sum, details of this option are enclosed".*

This opening sentence suggests, at some point previously, Mr S told Aviva a lump sum was his preferred option. It seems a clearly worded response to specific comment that Mr S raised. But it's not apparent from Aviva's call notes when or how he told Aviva this.

Regardless I think he must have said it, otherwise there'd be no reasonable explanation for the letter beginning in that way.

I acknowledge this letter was sent only six working days before the end of the tax year, suggesting it wasn't until that date Mr S decided that this was his preferred option – which wouldn't have given enough time for signed forms to have been returned and processed before the end of the tax year. But the timing of that letter must be viewed within the context of the delayed sequence of events that did occur. It wouldn't have been sent, and previous phone calls wouldn't have been made by Mr S chasing updates (which I think likely prompted that letter being sent), or needed to be made, had the complete set of OSP forms been sent on time. Instead, I think it's fair to conclude that, armed with the full information by 12 March (as above), Mr S would have chosen the lump sum option at that time.

That being so, would Mr S have been able to return the signed lump-sum option forms in time for them to be processed, and funds paid, before the end of the tax year? If I assume it's likely the vesting quotes were received on Friday 12 March, and Mr S completed and returned them on Monday 15 March, Aviva would have received them on Tuesday 16 March. Aviva advised it takes 48 hours to scan documents to their file (taking it to Thursday 18 March), meaning Aviva would likely have started working on the request on Friday 19 March.

Aviva told us they'd usually take ten working days after receipt/scanning to process a request. This would make Thursday 1 April 2021 the 'tenth day'. This happens to be the final working day of the 2020/21 financial year - the Easter Bank Holiday occurred between Friday 2 and Monday 5 April, and as 5 April was the last day of that tax year – and I accept Aviva wouldn't have been processing requests over the bank holiday weekend, as these are not 'working days' – meaning Thursday 1 April was the final day on which Aviva could process any option request in that tax year.

This is a tight schedule, and the successful processing of the lump-sum option assumes there were no problems along the way. Nevertheless, I've taken account of all of Aviva's stated process timeframes - and also allowed periods for Mr S to properly consider his options – and this still arrives at an outcome where the lump-sum option was achievable.

So, on that basis I'm satisfied - on the evidence I've been provided with – there was enough time for Mr S to have chosen the lump sum option had a complete set of OSP forms been sent on time, and further that it's most likely he would have chosen that option.

<u>Putting things right</u>

Where I think a business has acted unfairly, or made a mistake, I would usually ask that business to put their consumer back into the position they would have been in, had that mistake not happened. But here, that is not possible.

I've said I think Mr S would have taken the lump sum option, which would have meant he'd have received a net sum of £11,757.99 (after deduction of £3,550.60 tax). But what did happen was that Mr S received a tax-free lump sum of £3,827.15 at the beginning of the following tax year, together with a yearly annuity of £1,114.93. This annuity has been in payment since the 2021/22 tax year. I don't know how much tax Mr S has paid on his annuity, but assuming it was charged at a 20% tax rate, he would still have received close to £6,000 net by now. Further, it's not possible to 'cancel' an annuity once it's been purchased. Which means here, I can't put Mr S back in the position he would have been in.

Instead, I'll consider the distress and inconvenience Mr S has likely experienced as a result of the mistakes Aviva made. They've already compensated him for the inconvenience *caused by the administration delays – and I think the £150 paid fairly reflects this distress. But I think it's clear Mr S experienced further distress and inconvenience as a result of being unable to choose his preferred lump sum option, and further compensation should be paid in relation to this. Attaching a value to the distress experienced here is not an exact science but having considered everything I think £500 fairly reflects that distress. And this is what I'm minded to ask Aviva to pay Mr S here.*

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.

Both parties have responded to my PD. Mr S has accepted my recommendation, but Aviva have not. They disagree it was Mr S' intention to choose the full lump sum option.

Aviva have now provided the call recordings I'd asked for prior to issuing my PD (25 January, 4, 18 and 23 February, and 12 March 2021). Aviva pointed out Mr S made no comment in these calls suggesting his preference was the lump sum option, and that he mainly talks about the annuity and GAR options. Having listened to all these calls, I agree. But I don't think the content of these calls is the determining factor here.

What seems clear from these calls is that Mr S remained confused about what a GAR was, and much of the time spent on the calls was discussing this – and even after one call agent (on 4 February) tried to explain what a GAR was, Mr S responded by saying he "didn't understand a word" of what he was told. The call concluded with Mr S saying he'll wait to receive the OSP. So, I think it's fair to conclude Mr S was unable to form a view on what his best option was until at least after receiving the OSP (which he received by post on 23 February 2021) – because he didn't fully understand what his options entailed.

That confusion is still evident in Mr S' call with Aviva on 23 February, and culminates in Mr S returning the OSP documents (Aviva received these on 2 March 2021) asking for quotes for the lump sum, and the annuity options – so it appears clear Mr S was still considering his options at this time. And the last call I've been provided with, on 12 March, begins with Mr S enquiring when he'll get his vesting quotes. Mr S also asks about the timing of payments, and whether payments will be made before or after the end of the tax year. I don't think he expresses a preference about this on this call, and nor does he mention it may be beneficial for him to be paid within the 2020/21 tax year, but it appears clear the timing of the payments is something that is on his mind.

In Aviva's PD response, they also comment on their 24 March 2021 letter. They say it was Mr S' returned OSP forms (which they received on 2 March), in which he asked for the various quotes, that resulted in that letter being sent. Having looked again very carefully at the sequence of events here, I don't agree. I'll explain why.

There's no dispute that Mr S asked for vesting quotes for the lump sum, and the annuity options. And Aviva agree these should have been sent to Mr S on 18 March. A letter enclosing Mr S' vesting quotes was generated on that date, but wasn't sent (again, not in dispute). It appears it was *this* letter that was generated following the receipt of the OSP.

The letter that was sent on 24 March, which begins by making a specific reference to Mr S wanting to take the full lump sum, appears to be a different one. There was a phone call between Mr S and Aviva on 24 March, in which Aviva's phone notes suggest Mr S was chasing his quotes. It was as a result of this call that it becomes apparent the 18 March letter hadn’t been sent, and a further complaint is raised. I haven’t been provided with this call recording, so I’m unable to confirm precisely what was said.

Notwithstanding, I still think the evidence I’ve seen suggests Aviva’s 24 March letter – referencing Mr S’s wish to take a lump sum – was likely sent following his call to them on the same date. And further, that Mr S had by this time decided the lump sum was his preferred option. This conclusion is supported by the notes on Aviva’s system following another call two days later, which records:

> *“[Mr S] said he started this in January this year and with the terrible service now being told that this will not be paid within this tax year….[Mr S] said he was going to take a lump sum as he is self-employed so this is why he wanted to be paid in this tax year, he has to review his options and he will need to seek an (sic) financial advisor on this before he can make this big decision…”*

So, whilst I agree with Aviva that Mr S said he was going to seek advice about his options as late as 26 March (so, too late to have returned the relevant vesting quote paperwork and be paid in the 2020/21 tax year), I disagree when they say this suggests he hadn’t made up his mind by then. For the reasons I’ve explained above, I think I think it’s clear he had – and that his preferred option was the lump sum.

So, repeating what I said in my PD, had the OSP and later the vesting quotes been sent when I think they should have been, some of the above phone calls wouldn’t have happened – they wouldn’t have been necessary. And had they been sent on time Mr S would likely have settled on his preferred option (lump sum) earlier than he eventually did. This would’ve meant that Mr S would have had enough time to return the ‘lump sum’ form for it to be processed before the end of the 2020/21 tax year. And, as I’ve concluded above, I’m satisfied this is what I think Mr S would likely have done, and it was Aviva’s delays that prevented that from happening. Accordingly, I’ve not seen anything that compels me to change my proposed PD outcome, and for the reasons set out in my PD, I think Aviva should pay Mr S a further £500 D&I.

My final decision

I uphold Mr S’ complaint against Aviva Life and Pensions UK Ltd, and require them to pay Mr S a further £500 compensation for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 28 March 2023.
Mark Evans
Ombudsman