

## **The complaint**

Mr C complained that Aviva Life & Pensions UK Limited caused delays in arranging for the payment of his pension and tax-free cash. He says the delays caused him to draw money from another pension which resulted in him paying tax that he otherwise would not have paid. He wants to be compensated for the tax and for the distress and inconvenience he's been through.

## **What happened**

Mr C was turning 65 in April 2021 and wanted to take his pension and tax-free cash. Aviva initially wrote to him in September 2020, indicating that he might be entitled to £3,396 in tax free cash plus a pension of £1,100 a year. Mr C contacted them in January 2021 to start the process of taking his benefits. Because he had an older type of pension he was potentially entitled to more than 25% of the fund as tax-free cash. He needed to complete an A-Day form with some old salary details so Aviva could calculate this.

He sent the form off on 20 January 2021, but either it was not received by Aviva, or it was received and then lost. Mr C contacted Aviva on 11 February having received a chasing letter. They told him that they did not have the form and it would take seven weeks from when they got the form to calculate his tax-free cash entitlement.

Mr C sent a new form to Aviva by email on the 1 March 2021, for which he received an email receipt. On 26 April, after Mr C had chased Aviva several times and lodged a formal complaint, Aviva confirmed it had the form and was able to calculate benefits. Mr C confirmed his cash and annuity preference and quotes were issued on 5 May, then re-issued on 3 June. Mr C's benefits were finally paid on 19 July, along with interest for the delay. In the meantime, Mr C had taken a withdrawal from another pension scheme, which had to be taxed, so that he had enough funds to cover a final car payment that was due in July.

Aviva didn't uphold the complaint because it said that it had met the timescale quoted of seven weeks from the date the form was received to complete the calculations.

That was when Mr C approached this service to resolve his dispute.

Mr C told us that he needed the tax-free cash from this pension to cover a final payment on his car finance agreement of £8,457.50, due in July 2021. Due to the delays he had lost faith in Aviva's ability to meet the deadline so he withdrew the money from another pension with a different provider, drawing £16,000 gross (£10,525 after tax) which included additional funds to cover his cost of living.

Our investigator felt that the business had not acted fairly and reasonably in arranging for Mr C's pension benefits to be paid to him and awarded him £200 for the inconvenience.

Aviva accepted the investigator's decision but Mr C did not. He now felt that, as well as the payment for inconvenience, Aviva should reimburse him for the income tax he paid on the money that he would not have had to take out of his other pension had Aviva paid his benefits on time. So the case was referred to me for a final decision.

I issued my provisional decision on 14 February 2023. It 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 am providing this provisional decision as, based on everything I have seen thus far, I intend to depart from the investigator's decision in some respects.*

*I think that a timeline of the key events should help in understanding why I have made my decision.*

12/12/20	Aviva wrote with tax-free cash and annuity illustration
19/1/21	Mr C called Aviva to start the process of drawing benefits
20/1/21	Mr C returned the A-Day form
5/2/21	Aviva wrote to Mr C asking him whether he had decided what to do with his pension
11/2/21	Mr C received the letter and called Aviva who had no record of receiving the A-Day form. He was told it would take 7 weeks from receipt of the form to calculate his tax free cash entitlement.
17/2/21	Aviva emailed Mr C to chase his A-Day form
24/2/21	Mr C called Aviva for an update
1/3/21	Mr C sent a new A-Day form by email (acknowledged by reply)
12/3/21	Mr C called Aviva for an update
16/3/21	Aviva emailed Mr C to say the form had not been received
6/4/21	Mr C made a formal complaint to Aviva
22/4/21	Aviva acknowledged that they had received the A-day form
23/4/21	Mr C called Aviva for an update. Aviva called him back to say that the A-day form had been found.
26/4/21	Mr C reached age 65 and Aviva confirmed tax-free cash entitlement of £5,970 from a fund of £14,793
6/5/21	Benefit quotes were issued via secure email
12/5/21	Mr C received the payment from his other pension
31/5/21	Mr C received his tax-free cash calculation but had no annuity quote
2/6/21	Mr C called for an update. He was told that tax-free cash could not be paid independent of the annuity
3/6/21	Benefit quotes were reissued
16/7/21	Mr C made his final car payment of £8,457.50
19/7/21	Aviva wrote to confirm benefits had been paid – tax-free cash £5,983 + £1,001 pa pension.

*So the first delay in this process was caused by Aviva either not receiving the first A-day form, or by them receiving it and losing it. Mr C has no proof that he sent the form on 20 January but I think on the balance of probabilities he did send it otherwise it would be unusual for him to chase a response on 11 February. I also think that it is more likely than not that Aviva did in fact receive the form because the overwhelming majority of post does get delivered. And, as we will see below, Aviva later lost another form for a number of weeks so it wouldn't have been unprecedented for Aviva to have mislaid post around this time. However since Aviva contacted Mr C on 5 February and 17 February chasing his form I think that while this delay was unhelpful, Mr C should still have been able to receive his pension on or about his 65th birthday, which is how it was originally set up. So I don't think it would be fair to hold Aviva responsible for this part of the delay.*

*On 1 March when Mr C sent a new form in, by email this time, he was provided with an email acknowledgement, so we know Aviva had the form at that date. But it was not until 23 April when Mr C called again for an update that someone at Aviva found the form and the calculations were completed. I think it is clear that Aviva are responsible for this delay, which was 8 weeks from when the form was received as per the email acknowledgement.*

*Benefit quotes were finally issued to Mr C in early May, and again in early June. Mr C had difficulty opening secure emails so the documents were sent by post, and again in early June. The benefits were finally paid on 19 July, another 6 weeks from when the quotes were issued. By this time Mr C had lost faith in Aviva's ability to meet his deadline so had requested funds from another pension arrangement (with a different provider) to cover his car payment. Mr C says this caused him to pay tax that he otherwise wouldn't have needed to pay.*

*There was a period of 8 weeks (from 1 March) when Aviva had Mr C's form but either did nothing with it or couldn't find it. I think it is clear that this delay was Aviva's responsibility.*

*There was a further period of nearly three months from 27 April, when Aviva were able to calculate benefits, and 19 July when the payments were finally made, which I think is longer than it should take. While there is always the possibility that Mr C could have chased Aviva more regularly and potentially speeded things up in this period, because he had lost faith in Aviva and made other arrangements, I can see why he might not have done so. I think that, given the delays he had already experienced, it was reasonable for him to make other arrangements.*

*I therefore find that, based on all the evidence I have seen, it was reasonable for Mr C to expect to receive his benefits on or around his 65th birthday, well in time for his car payment, and that if not for delays caused by Aviva, he would have done so. Aviva had roughly three months to carry out the whole process from when Mr C originally got in touch to take his benefits, to his 65th birthday, when the policy was always intended to pay benefits. I think that this a reasonable timescale, even taking into account the need for calculations.*

*Where a business has not acted fairly and reasonably, this service aims to put customers back into the position they would have been had the business not done so. I note that Aviva added an interest payment to cover the delays, which I think it was fair to do. But it is not entirely clear how Aviva calculated their interest payment, so I will cover that below. I also think that it is fair that Aviva compensate Mr C for the inconvenience he has experienced and for any unnecessary tax he had to pay as a result of the delay.*

*Based on the projection he received in December, Mr C would have been expecting tax-free cash of £3,421. Although the actual amount of tax-free cash he received was higher, neither he nor Aviva knew this until the calculations had been carried out, which was in April. So although he received £5,983 in the end, this is not the amount he would have been expecting, so he could not have been relying on that amount for his car payment.*

*For the reasons I have already explained, I do think that it was reasonable for Mr C to expect to receive the tax-free cash by his 65th birthday on 26 April 2021. Since this didn't happen, he had to take a taxable withdrawal from elsewhere to make up the difference and therefore to that extent I think it's fair to say he ended up paying tax unnecessarily on the £3,421 that he was reasonably expecting to receive. I know that Mr C actually withdrew more than this, but some of what he withdrew was to cover his living expenses.*

### **Putting things right**

*For the reasons explained above, I agree with our investigator that Mr C has not had an*

*acceptable level of service from Aviva, and I also agree that it is fair and reasonable that Aviva compensate him for the delay in accessing his pension, the inconvenience this caused and for any tax he paid unnecessarily as a result. Aviva must therefore:*

- Calculate and refund to Mr C the amount of tax he had to pay to withdraw £3,421 net from his other pension that he would not have had to pay had he received the money from Aviva on time.*
- Aviva may wish to confirm with Mr C what his tax position was for the tax year 2021/22 in order to do this. Alternatively Aviva may wish to assume Mr C paid basic rate tax on the gross amount of £4,276 and refund 20% of this amount to Mr C, which comes to £855.*
- Aviva should pay interest on the compensation amount at 8% simple per year from 26 April 2021 to the date of settlement.*
- I have not seen Aviva's calculations for the interest payment they have already made. But they should make sure that it covers the period from Mr C's 65th birthday to the actual date of payment, at a rate of 8% simple. If this results in a higher amount than already calculated, then Aviva should make the payment up to the higher amount.*

*Aviva should also pay Mr C £200 for the inconvenience he has experienced as a result of the delay.*

### **Response to my provisional decision**

Both parties have responded to accept my provisional decision and neither has offered any new information or arguments.

As no new information has been provided I see no reason to change my decision. So I remain of the view I set out in my provisional decision.

### **My final decision**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

For the reasons given above, I uphold this complaint. I require Aviva Life & Pensions UK Limited to take the actions detailed in the "Putting things right" section above and provide Mr C with their calculations in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 April 2023.

Martin Catherwood  
**Ombudsman**