

## The complaint

Mr T complains that Aviva Life & Pensions UK Limited (Aviva) delayed the payment of his pension resulting in lost investment returns and more tax being paid than necessary. He would like compensation for the losses suffered.

## What happened

Mr T had an executive pension plan comprising several policies (the plan). He was approaching age 75 and Aviva sent him a retirement pack on 4 February 2020 and a reminder letter on 3 March 2020. Mr T called Aviva on 5 March 2020, around three weeks before his birthday. He told Aviva he would exceed the pensions lifetime allowance (LTA). It said it would escalate the matter and send the relevant LTA forms by email. Mr T chased these the next day and they were sent. Mr T completed them emailed back on 11 March 2020.

Between 6 March and Mr T's birthday on 27 March 2020, several further calls took place. What was said is disputed. In summary, Mr T says Aviva told him his preferred payment option of a single lump sum was available and would be processed before his birthday. But Aviva says it was awaiting instructions from Mr T, which weren't provided in time.

Mr T's benefits weren't paid before his 75<sup>th</sup> birthday. He says Aviva told him this would be backdated, it wasn't, and a complaint was raised. Mr T says he pressed for updates about this over the next few months as further complaints were raised over various other issues. Aviva said it now couldn't pay Mr T's benefits as a lump sum due to HMRC restrictions and the only option available was annuity purchase. It said it needed more information from him to complete the LTA check. When this was completed, it said the full value of the plan would be subject to an LTA tax charge.

Mr T said as the age 75 deadline had been missed, he would now pay more in tax overall. With his fund now subject to a 25% LTA tax charge with the remainder liable to income tax at his marginal rate, with the alternative option of a 55% LTA tax charge with no liability to income tax no longer available. Mr T said his plan remained invested and its value had increased. But when it was moved to a nominee account in August 2020 the amount was around £50,000 less than the value shown a few days before. A further complaint was raised about this.

In October 2020 Aviva offered a concession to move the plan to drawdown or to allow transfer to another provider. It said it couldn't arrange the 55% tax option as Mr T was past age 75 and it had to deduct LTA tax at 25%. Mr T says he wanted a response to all his complaints before deciding. It was eventually agreed that Aviva would deduct the 25% LTA tax charge, transfer the balance to a drawdown plan and Mr T would immediately take all benefits, subject to PAYE. But, with the various further delays, it wasn't until 29 June 2021 that Mr T's fund was paid out to him.

Aviva accepted it had caused delays. It paid Mr T a total of £550 compensation for the distress and inconvenience caused. It said his fund had been disinvested at the value on 26

March 2020, when he'd wanted the benefits paid. And, that it had added interest to June 2021 of £4,313.03, calculated at Bank of England base rate plus 1%.

Mr T referred his complaints to our service. He said he disputed Aviva's version of events in the period before his 75<sup>th</sup> birthday. Our investigator looked into it and upheld the complaint in part.

Our investigator said despite Aviva writing to Mr T on 4 February 2020, he'd only contacted it on 5 March 2020, and it wasn't realistic to expect Aviva to process everything in three weeks. So, it wasn't responsible for any LTA tax consequences which Aviva had dealt with correctly, in line with HMRC guidance.

Our investigator said as Mr T wanted to take benefits in March 2020, it was fair to use the valuation from then. He said Aviva had caused delays and should have added interest at 8% per year simple from 26 March 2020 to 29 June 2021. So, it should update the calculation. But he said the £550 compensation paid for distress and inconvenience was fair in the circumstances.

Mr T said two other pension providers had successfully paid benefits in the same timeframe, including deducting LTA charges. Our investigator said he still didn't think it was reasonable to expect Aviva to have been able to complete the LTA and other checks within three weeks.

As Mr T doesn't agree it has come to me to decide.

### **My provisional decision**

I issued my provision decision on 24 March 2023; I explained the reasons why I was planning to uphold the complaint. I said:

*I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint.*

*At this stage I don't think Aviva has treated Mr T fairly and I think it is responsible for the failure to process his benefits before he was 75. I think this led to the subsequent complaints, so resolving this initial complaint fairly will also resolve those that followed.*

*Our investigator thought that Mr T simply hadn't allowed adequate time to complete the necessary processes before his 75<sup>th</sup> birthday. So, Aviva wasn't responsible for any tax consequences arising from that but was responsible for delays subsequently.*

*Initially I thought by not contacting Aviva until 5 March 2022 Mr T hadn't given it a reasonable time to process everything before his 75<sup>th</sup> birthday. Even if other providers were able to process his benefits quickly Mr T didn't necessarily mean Aviva had treated him unfairly in not being able to do the same. Particularly as it had contacted Mr T before then asking him to get in touch.*

*And Mr T's pension affairs were more complex than most. I thought that he'd be aware of this. In part because he'd made various elections and decisions about his pension benefits in the past due to changing tax legislation. And, reasonably, he might have been mindful of the possibility of additional requirements for Aviva to be able to process his retirement benefits. Meaning, he might have responded to the ROP sent on 4 February 2020 more promptly.*

*But I also thought that even if Mr T had responded immediately it wasn't clear that Aviva would have had time to process matters in time. Because Aviva first wrote to him around*

seven weeks before his birthday. But when he returned the LTA form on 11 March 2020, it didn't even raise queries and request further information until 23 April 2020, around six weeks later, despite it telling him it was being dealt with urgently.

And, if Aviva hadn't given itself adequate time to carry out the checks necessary before Mr T's 75<sup>th</sup> birthday that was hardly his fault. And this might have resulted in adverse tax consequences as well as creating a great deal of confusion and further delay in him receiving his benefits.

I also thought Aviva's file seemed to be missing some information. And from its own timelines it appeared to have failed to respond to some of Mr T's complaints and queries he'd raised about telephone calls, where he disputed its version of events summarised by Aviva.

So, I asked Aviva some questions about its procedures as a customer approaches age 75. As this is a cut-off point in tax legislation and where options offered by the plan may also become restricted. Aviva said it wasn't able to provide a typical timeframe for LTA checks to be completed. But there was a procedure for customers nearing their 75<sup>th</sup> birthdays where staff could share information. I also asked Aviva to provide copies of email exchanges, letters, and recordings of the numerous telephone calls with Mr T referred to in its file.

In the calls Mr T is repeatedly told matters were in hand and that Aviva had everything it needed to process things by his 75<sup>th</sup> birthday. After Mr T passed age 75 it initially it seemed Aviva agreed it had made errors. As when it called him on 24 April 2020, it said, having reviewed these calls it had opened a complaint on his behalf about the failure to process his benefits in time.

But I couldn't see that Aviva had provided a final response in respect of this complaint, something Mr T had chased it to do. I asked for a copy of this and a recording of an earlier call from 22 January 2020, which had been referred to on one of the calls I'd listened to.

Aviva provided a final response dated 27 April 2020. This referred only to one of the four policy numbers. It didn't identify what complaint it was addressing and said:

*"It was good we were able to talk things through and I'm glad we've been able to help resolve your concerns."*

It didn't say when this discussion took place.

I asked Mr T about this letter. He recalled this related to an exchange in March 2020 when Aviva said it would take ten working to make send his money once everything was sorted, which he thought was excessive. Aviva later agreed payment would be made in around three working days, resolving the complaint. In the calls from 5 and 6 March 2020, Mr T did express dissatisfaction about payment timeframes, so this final response could relate to that complaint.

From Aviva's own timeline Mr T continued to press for a response on this complaint for many months after this particular final response letter was issued. At this stage I don't think he has been provided with a final response on this key complaint from which the other complaints arise. This complaint was considered by our investigator in his view, and I am addressing it in this provisional decision and Aviva can raise any points it would like to make in response.

But, from Aviva's other comments, emails, and correspondence its position appears to be that Mr T didn't allow enough time before his 75<sup>th</sup> birthday for things to be processed. And, in

particular, failed to provide instructions of what retirement option he wanted before he was 75.

And having reviewed the evidence now available, I don't think that is the case and Mr T hasn't been treated fairly.

### **Should Aviva have been able to process the retirement benefits before age 75**

At this stage I think it should have. Had it, Mr T may have been able to arrange his affairs in a more tax efficient manner than he says was achieved. He also wouldn't have suffered the considerable delay in receiving his benefits.

Emails provided by Aviva in response to my queries show that soon after Mr T's birthday it was aware there was a problem. I think incorrect conclusions were drawn that he'd failed to provide instructions about what pension option he wanted, causing the deadline to be missed.

Instead, I think Mr T had provided clear instructions and was repeatedly told everything was in hand. Even if he hadn't given instructions, Aviva simply hadn't undertaken the work necessary on the LTA forms to process the benefits in time. And, crucially, I don't think Aviva gave Mr T the opportunity to provide the information needed in good time.

As a plan holder approaches their chosen retirement age (or age 75) pension providers normally write asking the customer to consider their options. These are often referred to as retirement options packs (ROP) or wake up letters.

When I asked Aviva if there were any special procedures to identify cases where policyholders were approaching age 75 it said:

*"The process team have confirmed: Yes, there is a RPI dashboard wherein the details of approaching age 75 cases are shared.*

*Also, system generated Wake ups are there for approaching age 75 cases."*

But an internal email thread beginning on 30 March 2020 has a message on 8 April 2020 suggesting there were problems with this system in Mr T's case:

*"Here we have followed the retirement procedure partially.*

*1<sup>st</sup> ROP was issued to Ph on 04/02/2020 i.e. 2 months before age 75 liner issued to PH before that no ROP was issued i.e. 1 year or 6 months before age 75 ...*

*We received completed LTA forms on 11/03/2020 in wrong team queue then it moved to correct queue on 16/03/2020."*

The "Ph" in this email is Mr T. There was a delay in Aviva allocating the LTA questionnaire Mr T returned, despite this being flagged as urgent following the call of 6 March 2020. It also suggests that Aviva should have issued other ROPs or wake up letters more than two months before Mr T's 75<sup>th</sup> birthday to give him more notice of the need to do something.

So, I thought that it likely that Aviva hadn't given Mr T or itself enough time to process his benefits before age 75. And having listened to the call of 22 January 2020, I think that responsibility for the failure to process Mr T's benefits before age 75 does fall entirely on Aviva not Mr T.

Mr T calls and asks for a valuation as he was approaching his 75<sup>th</sup> birthday and hadn't heard anything from Aviva. He asks how long the retirement benefit process will take. He is advised it can be dealt with over the phone, with documents issued by email for signature and return by email. After which it would then be typically 5-10 working days to finalise payment. Aviva says:

*"but I wouldn't leave it too close to your 75<sup>th</sup> birthday, get the ball rolling before that"*

Mr T then asks if the forms were sent out now, would it matter if he didn't return them for a month. He is advised anytime within the next month to six weeks "should be fine". Mr T queries this and is told:

*"to give us a phone back in six weeks or so".*

Mr T asks again how long the process will take, as he's trying to work around holidays. Again, he is told that once he returned the forms it will be around 5-10 working days. He asks if he needs to provide anything else. Having checked the plan, Aviva says he wouldn't need to provide anything else, except to possibly verify his bank account details.

And six weeks later, on 5 March 2020 Mr T called Aviva to progress matters.

Mr T informs Aviva he is over the LTA limit. It says it will email forms, which Mr T chases the next day. He asks if he can take the benefits as a one-off lump sum and is told he can. He asks if his benefits aren't paid by age 75 "do I suffer more tax penalty". Aviva says the fund will be disinvested at age 75, and annuity purchase would be the only option. Mr T confirms his preference is to take a lump sum and he knows "a big tax chunk comes off it".

Mr T emails the LTA form back on 11 March 2020. Hearing nothing, he calls on 19 March 2020. Aviva tells him it has the form, that he has decided (about benefits) and that nothing is needed from him, and someone would call him.

On 25 March 2020, without a call back, Mr T phones again. Aviva asks if he is looking to take a lump sum or buy an annuity. Mr T expresses concern about the volatile investment markets and asks about options. He is told these are lump sum, annuity, and drawdown. Mr T says he will give a decision the next day on either lump sum or drawdown.

*I think Mr T is concerned about lack of progress and volatile markets, with the value of his fund falling sharply. Taking benefits in one lump sum would crystallise that investment loss on the entire fund, where a drawdown option could mean that some of the investment could continue. By repeatedly asking him what option he wanted I think Aviva was just creating further confusion, whilst still telling him there was time to process his benefits.*

On 26 March 2020 Mr T calls. Drawdown and the lump sum option are discussed again. Mr T says he wants the lump sum option and offers to confirm by email if needed. He notes it takes Aviva days to actually look at emails, so it won't see this before his 75<sup>th</sup> birthday. Again, he is told there is nothing else he needs to do.

On 27 March 2020 (his 75<sup>th</sup> birthday) Mr T calls again. Aviva says he's submitted everything needed. But asks him to confirm what option he wants. Mr T says he'd confirmed he wanted a lump sum yesterday and asks if anyone has done anything. Aviva says his plan hasn't been disinvested yet, but someone will look into it.

Hearing nothing Mr T calls Aviva on 3 April 2020. He is told it doesn't know if the plan was disinvested but that this would be backdated if needed. Mr T expresses his dissatisfaction at the lack of progress and communication over the last month, with call backs promised but

never made. Aviva says there are now delays due to Covid, but that a lot of money is involved, and the importance is understood. Mr T confirms the value of his plan from Aviva's app on 27 March 2020. He is told to keep a note of that but "obviously there will be tax and things paid on it".

As the pension provider it was Aviva's responsibility to carry out LTA checks required at age 75. And from the evidence available it is clear that it told Mr T when he needed to get in touch with it for it to process his benefits and that's what he did. I also think it's clear that he provided clear instructions about what he wanted, was told this was available and that it was in hand repeatedly.

I appreciate there would be pressure of work, made worse by Covid considerations. But these arose many weeks after Mr T first contacted it. And it flagged matters as urgent but then didn't appear to deal with it urgently and continued to misinform Mr T about what was happening. And nothing I have seen suggests Aviva was in a position to carry out the necessary work to have paid Mr T's benefits in time even without any issues relating to Covid.

So, I don't think Aviva it has treated him fairly and this resulted in all the problems that followed. And if Mr T has suffered a financial loss as a consequence, it is fair that Aviva compensate him for it.

### **Putting things right**

It's fair that Mr T should be put back into the position he should have been in if the error hadn't been made. Had Aviva processed things in time, I think Mr T would have taken a lump sum option. That means the fair value of Mr T's pension was the value the day before his 75<sup>th</sup> birthday. This is when it should have been disinvested according to Aviva's terms and conditions. And whilst the fund value increased after this date it could also have fallen. If that had happened, I would tell Aviva to still honour the value from 26 March 2020.

Had the benefits been paid in time the LTA tax charge would have been at 55%, with no further income tax. The value on 26 March 2020 seems to have been £425,355. The LTA tax charge would have been around £233,945 and Mr T would have received around £191,409. I'll call this Outcome A.

Outcome B is what happened. The LTA tax charge was 25% (£106,338.75) and the balance of the fund (plus some interest added for late payment) moved to drawdown. The value then fully encashed before PAYE was £323,366.32. Aviva says the net amount paid to Mr T was £198,552.17. This may well not reflect Mr T's overall income tax cost on the gross payment as he has said.

The interest rate used under Outcome B to compensate Mr T for the late payment was Bank of England base rate plus 1%. Our service expects a rate of 8% per year simple to be used, so the amount paid to Mr T was less than it should have been.

What I think Aviva should now do is recalculate the figures on both outcomes by establishing the net fund value after both the 25% and 55% of LTA tax charge, using the fund value identified on the 26 March 2020.

It should add interest to both net fund values identified at 8% per year simple from 26 March 2020 to 29 June 2021.

*It should then calculate the actual marginal rate income tax cost on the payment to Mr T on Outcome B. Mr T will need to provide Aviva with information about his overall income tax position in the 2021/22 tax year for it to do this.*

*If the calculations show that the net of all tax payment to Mr T under Outcome B is lower than the net payment under Outcome A, then Mr T has suffered a financial loss and should be compensated for it. It should allow for the interest it has already paid Mr T under Outcome B.*

*If there is a loss Aviva should then add interest at 8% per year simple to the loss from 29 June 2021 until our service tells it Mr T has accepted a final decision I may make along these lines.*

*If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.*

*Aviva should provide Mr T with a copy of all the calculations it has carried out in a clear and simple format.*

*I've also thought about the distress and inconvenience suffered by Mr T, which overall, I think has been considerable. £550 compensation has already been paid for the issues arising after Mr T's 75<sup>th</sup> birthday. But he hasn't yet been compensated for distress and inconvenience caused by the failure to sort matters out before then. So, I think it's fair that Aviva pay a further £250 in respect of this.*

I asked both parties to send me any further information or comments they would like me to consider.

### **Response to provisional decision**

Mr T said he accepted my provisional decision. He provided information about his tax position.

Aviva also accepted my provisional 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.

Having done so, I've decided to uphold the complaint.

As set out in my provisional decision I don't think Mr T has been treated fairly. I don't think Aviva allowed adequate time to complete the LTA checks necessary to enable his benefits to be paid in time, resulting in additional tax liabilities. And it then took far too long to pay his benefits to him and then offered compensation for the late payment at too low an interest rate, which I don't think was fair.

Aviva should put Mr T back into the position he should have been in as closely as possible and pay him further compensation for the distress and inconvenience he has been caused.

## **Putting things right**

If Aviva had processed Mr T's benefits in time, I think Mr T would have taken a lump sum option and the fair value of his plan was the value the day before his 75<sup>th</sup> birthday. The LTA tax charge would have been at 55%, with no further income tax.

Aviva should confirm the plan value on 26 March 2020 and calculate the LTA tax charge assuming benefits had been paid in time. This is Outcome A.

Outcome B is what happened Where the LTA tax charge was 25% (£106,338.75) and the balance of the fund (plus some interest added for late payment) moved to drawdown. The value then fully encashed before PAYE was £323,366.32 with a net amount paid to Mr T of £198,552.17. The interest rate used under Outcome B to compensate Mr T for the late payment was Bank of England base rate plus 1%, less than the rate of 8% per year simple our service considers fair.

Aviva should recalculate the figures on both outcomes by establishing the net fund values after both the 25% and 55% LTA tax charge, using the fund value identified on 26 March 2020.

It should add interest to both net fund values identified at 8% per year simple from 26 March 2020 to 29 June 2021, when the benefits were paid.

It should then calculate the actual marginal rate income tax cost on the payment to Mr T on Outcome B. Mr T has confirmed he will provide Aviva with information about his overall income tax position in the 2021/22 tax year for it to do this.

If the calculations show that the net of all tax payment to Mr T under Outcome B is lower than the net payment under Outcome A, then Mr T has suffered a financial loss and should be compensated for it. It should allow for the interest it has already paid Mr T under Outcome B.

If there is a loss Aviva should then add interest at 8% per year simple to the loss from 29 June 2021 until our service tells it Mr T has accepted my final decision.

If Aviva considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr T how much it's taken off. It should also give Mr T a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Aviva should provide Mr T with a copy of all the calculations it has carried out in a clear and simple format.

I think Mr T has suffered distress and inconvenience over what has happened both before and after his 75<sup>th</sup> birthday. Aviva has paid £550 compensation for delays after his birthday, and I think it is fair that it pays him a further £250 compensation for the inconvenience caused by the failure to sort matters out before then.

## **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Aviva Life & Pensions UK Limited.

I direct Aviva Life & Pensions UK Limited to undertake the calculations set out above and if Mr B has suffered a loss, it should pay him compensation. If there is a loss it should add

interest at 8% per year simple to the loss from 29 June 2021 until our service tells it Mr T has accepted my final decision. Aviva should provide Mr T with a copy of all the calculations it has carried out in a clear and simple format.

I further direct Aviva Life & Pensions UK Limited to pay Mr T a further £250 in compensation for the distress and inconvenience he has suffered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 26 May 2023.

Nigel Bracken  
**Ombudsman**