

The complaint

Mr K represents his mother – Mrs K – in this complaint. Originally, he had a power of attorney allowing him to do so. Sadly Mrs K died during the time we've been investigating. Mr K continues to represent her as the executor of her estate.

Mr K complains about information Aviva Life & Pensions UK Limited have provided in response to questions he's had about a bond his mother had with them.

What happened

Mrs K and her husband set up their bond in 1999, investing £25,000. The bond gave them monthly payments so that each year they received 5% of the amount they'd invested back. That seems to have made use of a tax deferred allowance the bond allowed.

The bond appears to have been split around April 2015, such that Mrs K owned one half, and her husband owned the other. Mrs K's husband died in November 2016. In early 2017 his half of the bond was reassigned to Mrs K, giving her both halves of the bond.

Mr K has been helping his mother manage the bond for some years. In 2020, he asked Aviva for details about the total value of withdrawals from the bond. Aviva sent letters in August 2020 to respond, but clarified in February 2022 that there'd been errors in those.

Aviva have given different figures for the total value of withdrawals up to early August 2020:

- In their 6 August 2020 letter it was £21,424.56
- In their 11 August 2020 letter it was £21,456.96
- In their 15 February 2022 letter it was £21,404.88.

In addition, the 11 August letter explained how the withdrawals were spread over time:

1. £104.16 taken monthly from 1 June 1999 to 28 September 2015 inclusive.
2. Two payments of £52.08, one on 24 December 2015 and the other on 28 January 2016.
3. £52.08 taken monthly from 28 March 2019 to 29 July 2020 inclusive.

I've calculated this comes to £21,509.04.

In addition, the 6 August letter explained that £905.04 of the withdrawals came solely from the half of the investment that had passed to Mrs K in 2015 (Mrs K's half). The 11 August letter didn't give a similar figure, but did say the payments numbered '2' and '3' above came

from Mrs K's half. I calculate these total £989.52. The 15 February letter also said the figure should be £989.52.

From 2020 to date, Mr K raised issues with Aviva about the information in these letters. He first came to us about the issues around June 2021. Aviva wrote some complaint responses in September 2021, but these don't add much to my understanding of the discrepancies. They however show Aviva offered to pay Mrs K £200 to compensate her for the delay in responding to the enquiries and complaints Mr K had raised.

Separately, Mrs K surrendered the bond in December 2021. That created a chargeable event for tax purposes. Aviva issued a certificate, which has raised further issues for Mr K.

I wrote last time how we'd received more details from Aviva about the chargeable event calculation. It had to consider the withdrawals made over the life of the bond. Aviva delayed providing the information twice to allow them to check a possible error. But on 5 May 2023 they confirmed the bond's gain had been calculated using the following withdrawal details:

1. £104.16 taken monthly from June 1999 to January 2017.
2. £52.08 taken monthly from February 2017 to January 2021.
3. £135.41 taken monthly from February 2021 to December 2021.

Aviva also provided a spreadsheet showing the dates of the various withdrawals. Using that spreadsheet, I explained that I could see the withdrawals to 29 July 2020 – the last before 6 August 2020 – would have come to £24,321.36.

Aviva also noted a mistake in the chargeable gain calculation made following the bond's surrender in December 2021. They said the gain for what had been Mrs K's half of the policy should have been £8,084, not the £8,188 used. They offered to issue a new certificate.

Last time, I wrote how I intended to uphold this complaint. I found the discrepancies above showed a difference of £2,916.48 between what Aviva told Mr K in February 2022 had been paid to Mrs K, and what Aviva told declared had been withdrawn in the tax calculation. I was minded to treat this as a loss for Mrs K, which Aviva would need to compensate her for.

I also wrote that I intended to attach interest to that payment to reflect that Mrs K – and later her estate – had been without the use of the money. I also said that if Aviva weren't able to calculate this interest payment in a set time, they were to reimburse any cost Mr K could show the estate had incurred having the interest calculated.

I also wrote that I intended to direct Aviva pay £1,000 compensation to Mrs K's estate to acknowledge the emotional impact they'd caused for Mrs K while alive.

Aviva responded asking for some clarification about the interest calculation I was directing them to make. I'll add to what I wrote last time to make this is a little clearer.

Mr K confirmed he'd received my provisional decision and asked for some more time to respond. We've given him just over seven weeks now, but I can't see any further representations. I'm satisfied I have enough information to make a final decision at this point though, so I've decided to proceed.

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.

My understanding of this case hasn't changed since last time. And it follows that my decision remains the same too. I'll repeat the key details here to confirm my final decision.

My summary above shows the discrepancies in what Aviva have said over the years about the total withdrawals for this bond. I find the discrepancies unreasonable. Aviva should have a record for this bond that shows exactly what has been withdrawn over the years. Their answer shouldn't change every time they give it.

I also consider the time taken by Aviva to respond to Mr K's contact – and to our investigation – was unreasonable. Aviva should have been able to use their records to provide the relevant details about this bond without this sort of delay.

Putting things right

The scale of the discrepancies here – coupled with the absence of a satisfactory record from Aviva – makes directing a remedy difficult for this case.

I consider it reasonable to use the value from Aviva's last letter to Mr K about the withdrawals – the one from 15 February 2022 which said they totalled £21,404.88 – as the amount Mrs K received from the bond, up to August 2020. Aviva had two years to confirm this figure was correct, and haven't shown us anything since then that convinces me any other figure is more accurate.

I also consider it reasonable to use the value from Aviva's tax calculation as the amount that's been withdrawn from the bond. Aviva took extra time to make sure what they sent us was correct, and were happy to use it in something as important as the bond's tax calculation. So I'm going to treat it as accurate. Up to August 2020, this totalled £24,321.36.

The difference between these two figures is then the difference between what Aviva have told us was withdrawn from the bond and what they've told Mr K – and us – was received by Mrs K. That amount – which I calculate comes to £2,916.48 – is a loss for Mrs K. She should have received everything withdrawn from the bond, either directly or through her husband and his estate.

To put that right, I direct Aviva to pay that amount to Mr K, as executor for Mrs K's estate.

I also find simple interest should be paid on this amount at 8%, to reflect that Mrs K was without the use of this money. But to do this, Aviva will need to track how the discrepancy between their February 2022 and May 2023 records has grown over the years.

To help with this, I can set out the discrepancy between the description given on the withdrawals in Aviva's 11 August 2020 letter – the first numbered list above – and the description given with their tax calculation in May 2023 – the second numbered list above. I've done this in the table below.

Period	11 August 2020 letter explanation	May 2023 Tax calculation explanation	Difference	Total difference to end of period (nearest £)

1 June 1999 to 28 September 2015	£104.16 withdrawn monthly	£104.16 withdrawn monthly	None	£0
October 2015 to November 2015 (2 months)	No payments		Increasing by £104.16 each month	£208
24 December 2015 to 28 January 2016 (2 months)	£52.08 withdrawn monthly		Increasing by £52.08 each month	£312
February 2016 to January 2017 (12 months)	No payments		Increasing by £104.16 each month	£1,562
February 2017 to February 2019 (25 months)		£52.08 withdrawn monthly	Increasing by £52.08 each month	£2,864
28 March 2019 to 29 July 2020	£52.08 withdrawn monthly		No increase	£2,864

The interest calculation needs to reflect this increasing difference. But it also needs to account for another £52.08 to reach the £2,916.48 difference I've seen between Aviva's February 2022 and May 2023 figures.

Given the confusing information Aviva have provided over this investigation, I'm going to direct the missing £52.08 be treated as if it was absent from 28 September 2015. That seems like the earliest possible point it could have arisen.

That means the interest calculation should apply 8% interest on this first shortfall for almost eight years, to reflect how long Mrs K's not had the use of it. At the other end of the scale, the last £52.08 – absent since February 2019 – will attract just over four years of simple interest in the calculation I'm directing.

If Aviva can't work this interest calculation out within two-weeks of being told this decision is accepted, Mr K can pay for an accountant to do the calculation and have Aviva reimburse the cost on top of the compensation for this case. Aviva may ask Mr K for an itemised receipt before making any reimbursement.

I'm not going to direct Aviva provide a definitive account of the transactions made on this bond over its lifetime. I don't believe they're able to. They've had years to do so already, including numerous requests from our investigation for this sort of information. If they had this to provide, they should have done so by now. The fact they haven't tells me they don't have such a record.

That further supports the financial loss compensation I've directed above. Without a definitive record Mr K will be left with a feeling Mrs K suffered a loss of some kind. But I consider it unlikely any loss would be more than the amount I'm directing. So the compensation will put right the absence of a reliable record, in that sense.

I can also direct compensation for any inconvenience, distress or suffering Aviva caused for Mrs K. But our scheme doesn't extend to compensating her representative – Mr K – directly. I note though that Mrs K was aware of Mr K's efforts, and would no doubt have been concerned to hear that Aviva's records and responses were so poor for such a long period.

I've thought about the £200 Aviva already offered to recognise this impact, but I find it doesn't go far enough. This matter went on for years without Aviva doing enough to provide a clear and satisfying account of the bond. The prolonged worry and upset that caused is better reflected with a payment of £1,000 compensation. Again, this will now be payable to Mrs K's estate, through her executor Mr K.

My final decision

I've decided to uphold Mr K's complaint on behalf of Mrs K about Aviva Life & Pensions UK Limited. To put things right, I direct Aviva to do the following:

- Pay Mrs K's estate £2,916.48 compensation as described above.
- Calculate and pay interest at 8% on this amount, to reflect the time Mrs K or her estate was without the use of the money.
- Pay any cost the estate incurs having the interest calculated, if Aviva have been unable to complete the calculation within two weeks of being told my decision is accepted by Mrs K's estate.
- Pay Mrs K's estate a further £1,000 compensation to acknowledge the prolonged distress this matter caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs K to accept or reject my decision before 1 August 2023.

Paul Mellor
Ombudsman