

The complaint

Mrs L says that Aviva caused delays in processing her pension withdrawal so that it was not made before the end of the tax year 2020/21. She was taking the money out so she could reduce her mortgage and because of the delay she decided not to take a second withdrawal because taking both lump sum withdrawals in the same tax year would mean that she would have to pay higher rate tax, which she felt meant her plans were not viable. So her mortgage was £16,000 higher than it would otherwise have been. She would like to be compensated for the additional costs she has incurred and the stress and worry over potentially having to sell her home.

What happened

In early 2021 Mrs L contacted Aviva to begin the process of taking a full withdrawal of a pension she had with them. She was intending to take this pension before the tax year end. She would then take another withdrawal of £16,000 net of tax from another scheme in the new tax year. Combined, the two payments would allow her to repay some borrowings and remortgage with a balance of £40,000. Aviva told her that it would take 7-10 working days from when the forms had all been received correctly completed.

The initial forms, which requested quotes and an application pack, were returned to Aviva on 19 February. Aviva issued the pack on 25 February. This showed that the value of the pension was £16,210.07. £4,052.52 of this was available tax free, with the other £12,157.55 taxable. Applying an emergency tax code, the net amount paid was £12,389.07 but the letter said that Mrs L could reclaim any overpayment of tax. Mrs L returned the completed forms on 12 March. On 18 March Aviva contacted Mrs L to verify her bank details, which she did the following day.

On 30 March, with no payment yet issued, Aviva told Mrs L that 12 March would be the relevant date for tax purposes even if she received her money in the new tax year because this was when the forms had been received. This was incorrect.

On 14 April, with no payment still made, Aviva contacted Mrs L to check if her pension had been subject to a Pension Sharing Order (PSO); she confirmed that it was not and the payment was made the following day, with 15 April 2021 being the relevant date for tax purposes. Crucially, that date was in the new tax year.

Mrs L explains that she decided not to make the second pension withdrawal of £16,000 because she would have to pay higher rate tax on the majority of it, which she felt meant her plan was not viable. If the Aviva withdrawal had been paid in the previous tax year that would not have been the case. So rather than applying for a mortgage of £40,000 she had to apply for a mortgage of £56,000 with the money still held in the other pension. This meant monthly payments were £90 per month higher and the term was 1 year and 7 months longer than might otherwise have been the case.

Mrs L complained to Aviva because of what she felt were unnecessary delays. Aviva said that they received all they needed on 19 March and that it would not have been possible at that date to make the payment before the tax year end. Their timescale was up to ten

working days for the payment to be made and then a further seven working days for the payment to reach the customer's account. Aviva accepted that they did not meet this timescale so apologised. They also apologised for the incorrect information about how the date for tax purposes was applied and offered £200 for the inconvenience and by way of apology.

Mrs L explained to Aviva the impact of the payment being taxed in 2021-2022 and Aviva offered a further £200 for the impact of its mistake. Mrs L felt that this still did not reflect the impact on her so she brought her complaint to us.

Our investigator asked Aviva for more detail on what had happened and Aviva said that they had been waiting for the Pension Sharing Order details, which they asked Mrs L for on 14 April.

The investigator thought Aviva had caused a delay and should have been able to make the payment in 2020-2021. He said that Aviva should determine the additional interest Mrs L would have to pay as a result and pay this amount to her.

Aviva disagreed. They said that if they had met their 15 working day turnaround from 19 March then the payment would still have been in the next tax year, on 9 April 2021. Since the payment was made on 15 April they felt that their offer of £400 in total had been fair.

The case was referred 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.

My provisional decision

I issued my provisional decision on 29 June 2023. It said:

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

Aviva have accepted that a) they did not meet their own timescales and b) they gave Mrs L incorrect tax information. But they also say that the payment could never have been made in tax year 20-21 so what they have offered by way of apology is fair.

Mrs L was initially told that the process would take up to ten working days so I think it was reasonable for her to send in forms to start the process on 17 February and expect to have her payment before the tax year end on 5 April.

In their response to Mrs L in May 2021 and again in response to the investigator's opinion, Aviva said that they had received all of their requirements by 19 March. Aviva then added ten working days to this to carry out their processes, and a further seven working days for payment to arrive in Mrs L's bank account. That meant, in their view, that the payment could never have been made in the 20/21 tax year. It would have been 9 April.

But Aviva received the forms on 12 March, so that is when the turnaround times should have started. I accept that Aviva were busy at that time of year, so I think that contacting Mrs L on 18 March (after four of the ten working days Aviva said was their normal timescale) to verify her bank details was reasonable. But I do not agree that it was reasonable to start another waiting period of 15 working days from 18 March.

But as it turned out Aviva were still waiting for confirmation that there was no PSO in respect of the pension. Aviva did not ask Mrs L about this until 14 April, and she was able to confirm straight away. Once they had the PSO confirmation, payment was made the following day on 15 April. There is no reason why Aviva should not have been able to ask Mrs L about any PSO on 18 March. I think this is what caused the payment to miss the earlier tax year.

As Mrs L has explained, because of the delay she did not want to take the other pension withdrawal in 2021-2022, as both withdrawals in the same tax year would have meant that most of the other withdrawal would have been taxed at the higher rate. Rather than pay Higher Rate tax she decided not to take the withdrawal.

But Mrs L could still have used a large part of the £23,959 in the other pension to reduce her mortgage without paying higher rate tax. Her earned income in 2021-2022 was £28,555. higher rate tax started that year on income over £50,270. The taxable part of the first pension was £12,157, so she still had £9,558 of her basic rate band remaining.

She could take £5,989 (25%) of the pension tax free plus £9,558 as taxable income (£7,647 net) for a total of £13,636. That would leave her £2,364 short of her target. A year later, she could either take a lump sum, which would be within her 5% early repayment allowance, or set up regular withdrawals to cover the additional monthly cost. Either way, she would be using her pension fund to reduce her mortgage balance and paying no more than basic rate tax as she intended.

So I find that Aviva's error caused Mrs L to have a mortgage balance £2,364 higher than it would have been if not for their error, and for a period of one year. This is because this figure would, more likely than not, have been within the permitted mortgage overpayments that Mrs L could make without penalty in the following year.

Mrs L has told us that this has caused her ongoing anxiety and stress as well as exacerbating a pre-existing health condition. She was unsure whether she would be able to secure a mortgage at the higher balance which caused her to worry that she might have to sell her home.

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 provisional decision.

Mrs L said that she might not have taken a withdrawal that brought her right up to the higher rate threshold so early in the tax year, so she may have left a little leeway. Otherwise she had no further comments.

Aviva also responded. They said that the PSO issue would not have made any difference even if they had asked for, and obtained, confirmation along with the bank account verification on 19 March. This was because it was their process to start another ten working day period from this date.

Going further, they said, even if they had everything they needed on 12 March then the payment could never have been made before the end of the tax year. The earliest it could have been made was 26 March (ten working days after 12 March) which would have meant it clearing on 6 April, the first day of the new tax year.

I have already explained that I do not agree that it is fair or reasonable for every single

process to take ten working days. Nor do I agree that it is acceptable for such a period to start again for every step in a process. Some tasks will be more complex than others and have more steps. In order to treat their customers fairly, businesses ought to complete tasks as quickly as possible, subject to the necessary safeguards, rather than rely on an arbitrary period of time for each and every task.

As Aviva will be aware, around the end of the tax year timescales can have more impact on their customers than at other times of the year. If, as they now say, it was never going to be possible to make the payment in the earlier tax year, then Aviva should have made this clear to Mrs L. But there is no evidence that they did. Furthermore Mrs L was actually, and incorrectly, told that the relevant date for tax purposes was 12 March.

So I still think it was reasonable for Mrs L to expect her payment to be made in the earlier tax year based on what she had been told.

I have carefully considered the responses to my provisional decision, and for the reasons already given I remain of the view I set out in my provisional decision and explained further above.

Putting things right

When a business makes an error we aim to put the consumer back as close as possible into the position they would have been in, if not for the error. We would also expect consumers to take reasonable steps to mitigate any losses or costs.

For the reasons I have explained above, I find that Aviva's delay caused Mrs L to have a mortgage balance £2,364 higher than it could otherwise have been, and for a period of one year. I understand that Mrs L took out a larger mortgage than that. But that was a decision she made to avoid tax, and enabled her to retain her pension to be accessed at a later date.

So Aviva must pay to Mrs L an amount equivalent to the additional interest on £2,364 of her mortgage balance for the period of one year. Aviva should also pay Mrs L interest on this amount at a rate of 8% simple from 5 April 2021 to the date of settlement to reflect the fact that Mrs L was without the use of her money during this time.

Aviva must also pay to Mrs L a total sum of £600 for the anxiety and health issues caused by their error. Mrs L has explained to us that she thought she might have to sell her home at one point and the stress affected her health, so I think that this is a reasonable amount in the circumstances.

This element of the redress should take into account any amount already paid so that the total is £600. I believe that one of the £200 cheques issued to Mrs L had been cancelled when Mrs L presented it to her bank so that would leave a shortfall of £400 still to pay.

My final decision

For the reasons given I uphold Mrs L's complaint against Aviva Life & Pensions UK Limited. My decision is that Aviva Life & Pensions UK Limited should pay the amount calculated as set out above.

Aviva should provide details of its calculation to Mrs L in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 22 August 2023.

Martin Catherwood
Ombudsman