

The complaint

A representative of the estate of the late Mrs G complains that Aviva Life & Pensions UK Limited (Aviva) did not advise her correctly in relation to the documentation required when paying the death benefits from Mrs G's investment bond and her representative has encountered financial difficulties as a result.

For the sake of clarity, I have referred to the client throughout as Mrs G, and her daughter (the person bringing the complaint and representative of the client's estate) as Mrs R.

What happened

Mrs G held three investment bonds with Aviva. In June 2022 she sadly passed away. On 29 July 2022, Aviva wrote to Mrs R, confirming the valuations of the three bonds as at 30 June 2022, the date that they had been informed of the death of Mrs G. The letter stated that the value at that time was £218,684.64 and included information relating to the documents required and next steps for the funds to be paid to Mrs G's estate.

On 14 November 2022 Mrs R contacted Aviva. She had become aware that her solicitor had not progressed matters in relation to the estate (including not having returned the claim forms to Aviva) and asked whether probate would be required in order for Aviva to release the funds from Mrs G's estate. The representative for Aviva explained that it was likely that probate would be required prior to money being released but that she would confirm this. It was subsequently confirmed that due to the combined value of the investments, probate would be required but that an interim payment could be made. During this call, Mrs R made a complaint that she was not made aware that the Grant of Probate would be required in order for money to be released to the estate when she first contacted Aviva to make them aware of her mother's death, and to commence the process of having the funds released.

In mid-December 2022, Aviva made an interim payment of £20,000 (to be split between Mrs R and her brother, the other executor and beneficiary) in order to help Mrs R's financial position.

On 11 January 2023, a final response to the complaint was issued to Mrs R. Aviva upheld Mrs R's complaint and confirmed that the incorrect forms were sent on 29 July 2022, which did not request sight of the Grant of Probate. They apologised for the upset caused by their error, and offered Mrs R £150 to compensate her for this. Mrs R declined this payment. Mrs R was unhappy with the outcome of the complaint, and referred her complaint to this service on 2 May 2023. She reiterated the fact that Aviva's error in not advising her that a Grant of Probate was required before the funds could be released had caused a number of financial issues for her and requested that Aviva reimburse the additional interest charges incurred on her credit cards and mortgage plus compensation for the stress and anxiety caused by their mistake.

On 16 June 2023, the Grant of Probate was received by Aviva from Mrs R's solicitor, and payment was made to Mrs R on 27 June 2023.

On 5 September 2023, the investigator issued his view. He stated that although Aviva made an error by not advising Mrs R that a Grant of Probate would be required, this did not cause the delay in Mrs R receiving the pay out from her late mother's investment, because a Grant of Probate would always have been required and there was a delay in Mrs R's solicitor in sending the Grant of Probate in the first instance.

Mrs R remained dissatisfied, and as a result her complaint has been forwarded 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.

Having done so I agree with the decision reached by the investigator and broadly for the same reasons. I will explain why.

Before getting into the detail of the complaint, I would like to firstly reiterate the purpose of this service, which is as an informal, impartial dispute resolution service. And while we do take relevant law and regulation into account when arriving at our decisions, our remit is focused on determining whether we feel a fair or unfair outcome has occurred – from an impartial perspective – after taking all the factors and circumstances of a complaint into consideration.

I have considered what I believe to be the main thrust of Mrs R's complaint – the fact that Aviva did not make her aware of the need to provide evidence of the Grant of Probate being obtained prior to them being able to pay the funds from her late mother's investment bonds to the estate for distribution, and her belief that this led to delays which caused her financial difficulties.

The letter sent to Mrs R on 29 July 2022 outlined a number of documents that needed to be sent to Aviva in order for the claim to be progressed. It stated that in normal circumstances a grant of legal representation would be required, however Aviva would consider settling the claim without this if the estate was not insolvent. It also stated that the claim form should be completed by the executors named in the will (or next of kin if there was no will), and should be returned to Aviva along with the death certificate, and a signed copy of the will (and codicils to the will) if there was one. The letter stated that the payment would be made straight into a bank of building society current account and would be available five days after the payment was made. It also stated "we will deal with your claim as quickly as possible. If we need anything else from you, we'll let you know."

It is unclear why the claim forms were not returned to Aviva until November 2022 however the call recording on file from November 2022 between Mrs R and Aviva indicates that the delay was caused by the solicitors to the estate. It was when Mrs R contacted Aviva having discovered this, that she found out that a Grant of Probate was needed. Obtaining probate is often a lengthy process spanning a number of months, and for the estate of Mrs G, it was not obtained until June 2023. Following receipt of the Grant of Probate, Aviva released the funds to the estate of Mrs G at the end of June 2023.

Mrs R states that the delays in the release of her deceased mother's bond proceeds have caused her financial hardship. In her complaint, Mrs R outlines a number of ways that she has been affected, including delaying her husband's retirement, the purchase of a new car and weekend trips away. She states that she has incurred additional interest on her mortgage, and built up credit cards which were attracting significant interest as a result of the delays.

I have considered whether Aviva's errors in their initial communication with Mrs R have resulted in the financial difficulties Mrs R faced. I am not persuaded that they have. I can therefore find no evidence that Aviva's error in not advising Mrs R that the Grant of Probate would be required had a material impact on Mrs R's financial position

I say this because I have considered what would most likely have happened if Aviva had correctly told Mrs R at the outset that a Grant of Probate would be required. I am satisfied that Mrs R's position would be the same as it currently stands. During the telephone call in November 2022, Mrs R indicates that the affairs of the estate were such that a Grant of Probate would always have been required. So, as Aviva needed to wait until probate was obtained in order to release the funds, they couldn't do that until the estate's solicitors had completed the process and obtained the Grant of Probate.

Regardless of whether Mrs R had been informed of the need to obtain probate in July 2022 or not, this delay would still have occurred – the funds would not have been released until probate was obtained, and the Grant of Probate forwarded to Aviva. The timeline provided indicates that the Grant of Probate was received and sent to Aviva in mid June 2023. Having read Mrs R's submission, it is apparent that the financial issues she experienced commenced during 2022, and in part were already being experienced prior to her mother's passing – it is therefore not reasonable to hold Aviva responsible for this. Nor do I think that any of the financial decisions made by Mrs R in 2022 and 2023 were as a result of a belief that the money from her late mother's investments would be paid immediately. It follows that I do not uphold this element of the complaint.

Aviva have previously offered £150 compensation to reflect their error in the documentation provided to the estate of Mrs G. This is in line with what this service would normally award for an error such as this so I agree this award is fair and reasonable under the circumstances of the complaint. therefore it follows that Aviva will be required to honour this offer. As the complaint has been brought on behalf of the estate of Mrs G, this should be paid to the estate.

My final decision

For the reasons stated above I uphold the estate of Mrs G's complaint against Aviva Life & Pensions UK Limited, and direct that Aviva should pay an amount of £150 to the estate of Mrs G to reflect the trouble and upset caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs G to accept or reject my decision before 17 April 2024.

Joanne Molloy
Ombudsman