

## **The complaint**

Mrs D has complained that Aviva Life and Pensions UK Limited didn't pay compensation into her pension plan as she'd requested. Mrs D says that Aviva Life and Pensions UK Limited paid the compensation directly to her instead and she has suffered a financial loss as a result.

## **What happened**

The background to this complaint and my initial conclusions were set out in my provisional decision, which I issued last month.

My provisional decision said:

### ***What happened***

*Mrs D held a pension plan with Aviva. Mrs D has been resident in Canada since 2005. In 2022 Mrs D received recommendations from her financial adviser to transfer her Aviva pension plan to a self-invested pension plan (SIPP) with a different pension provider. In this decision I will refer to the provider of Mrs D's SIPP as Firm A.*

*In July 2022 Aviva received a transfer request from Firm A. However, Mrs D's Aviva pension wasn't transferred to Firm A until late November 2022. Aviva has admitted that it delayed the transfer and that if it hadn't been for their errors Mrs D's pension transfer would have completed in early September 2022.*

*Mrs D complained to Aviva about the delays in completing her pension transfer in September 2022. Aviva responded to Mrs D's complaint in December 2022. Aviva confirmed details of the delays that they'd caused to Mrs D's pension transfer and offered Mrs D £400 compensation for the distress and inconvenience she'd suffered. Aviva also offered to carry out an assessment to determine if Mrs D had suffered a financial loss due to their errors.*

*In March 2023 Aviva wrote to Mrs D with details of their loss assessment. Aviva said that if Mrs D's pension transfer had completed in September 2022, instead of when it did complete in November 2022, then a higher transfer value would have been paid to Firm A. Aviva's assessment identified that the financial loss suffered by Mrs D was £3,143.22. Aviva said that they would compensate Mrs D for this loss.*

*In their letter of March 2023 Aviva went on to say: "I've therefore arranged for an additional payment to be made to you totalling £2,671.74. As any pension payment made directly to a*

*customer would be taxed, we've made the same assumption, so 25% is tax free and the rest is the same as if basic rate tax had been deducted. However, this doesn't need to be reported to HMRC as this is a compensation payment".*

*Mrs D has said that she had told Aviva that she wanted compensation paid into her Firm A pension and not directly to her. Mrs D therefore complained again to Aviva about the way in which they had paid compensation to her.*

*Aviva wrote to Mrs D again in March 2023 in response to her further complaint. In this letter Aviva said: "However, our policy is to pay compensation for financial loss outside the framework of the relevant pension scheme, rather than into your pension. It allows us to settle your claim in a reasonable timeframe and prevents us from having to ask complex questions to ensure that we are not causing further difficulties for you in terms of tax charges and limits on allowable contributions".*

*Aviva went on to say: "The fact that you are currently living outside the UK also affects the question of whether it is possible for the compensation to be paid into your pension. If it is able to accept them, you would be free to pay this amount as a contribution yourself".*

*Mrs D wasn't happy with Aviva's response. Mrs D says that she will need to declare the compensation payment to the Canadian tax authorities in her 2023 tax return. Mrs D says that she will then have tax to pay in Canada on the compensation payment.*

*Mrs D brought her complaint about the way in which Aviva had paid compensation to her to the Financial Ombudsman Service. One of our Investigators considered Mrs D's complaint. The Investigator upheld Mrs D's complaint and said that Aviva should pay the loss of £3,143.22 into Mrs D's Firm A pension, or if this wasn't possible, Aviva should give Mrs D documentation to confirm the compensation paid directly to her was notionally taxed at source.*

*Aviva didn't agree with the Investigator's view, so Mrs D's complaint has been brought to an Ombudsman.*

### ***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.*

*Aviva has admitted that it delayed the transfer of Mrs D's pension to Firm A. Aviva has completed a loss calculation which has identified that, due to their delay in completing the pension transfer, Mrs D suffered a financial loss of £3,143.22.*

*I don't think that the delays that Aviva caused to Mrs D's pension transfer, or the loss calculation completed by Aviva, are disputed by Mrs D. Instead, I think that Mrs D's complaint is about the way that Aviva paid compensation to her and that she will now have to pay tax in Canada on the compensation payment.*

*Mrs D has said she told Aviva that compensation should be paid into her Firm A SIPP and not directly to her. However, Aviva has paid compensation directly to Mrs D.*

*Aviva has explained that because they paid the compensation directly to Mrs D, they made a notional deduction for tax. Aviva has said that this is because any pension payment made to Mrs D would be liable to tax, after allowing for a 25% tax free cash entitlement. Aviva made a notional tax deduction of 20% against 75% of the compensation payment. Aviva therefore paid compensation of £2,671.74 to Mrs D.*

*Mrs D has said that if Aviva had not caused delays in completing her pension transfer, then the loss adjustment of £3,143.22 would have been included in the transfer value that Aviva paid to Firm A.*

*Mrs D has therefore claimed that due to these delays Aviva miscalculated the transfer value that it paid to Firm A in November 2022. Mrs D has further claimed that the loss adjustment of £3,143.22 is not compensation but is instead part of the transfer value that Aviva should have paid into her Firm A pension. Mrs D says that Aviva should now pay £3,143.22 into her Firm A pension as a transfer value from her Aviva pension plan.*

*However, I don't think that this is right. I say this because when Aviva completed the transfer of Mrs D's pension in November 2022, they correctly calculated the transfer value applying to Mrs D's Aviva pension plan at that time. I therefore don't think that Aviva miscalculated the transfer value that it paid to Firm A in November 2022.*

*Aviva were Mrs D's pension provider and administrator of her pension plan. Aviva has admitted that it caused a delay in completing the transfer of Mrs D's pension to Firm A. Aviva then completed a loss assessment to calculate the financial loss that Mrs D suffered due to their errors. Aviva have then paid Mrs D compensation to cover the financial loss she has suffered.*

*I therefore think that loss adjustment of £3,143.22 calculated by Aviva is a compensation payment and is not a transfer value.*

*Mrs D has provided evidence from HMRC and MoneyHelper to help support her claim that the payment of £3,143.22 offered by Aviva is part of the transfer value that applied to her Aviva pension and therefore can be paid by Aviva into her Firm A pension as a transfer value.*

*However, when Mrs D contacted HMRC she told them: "Last year when I instructed my UK personal pension scheme providers to transfer my pensions into my (Firm A) SIPP Aviva made an error in their calculations and later calculated a loss assessment".*

*However, as I've said above, I don't think this is correct. I don't think that Aviva made an error in their calculations. I think that Aviva correctly calculated the transfer value of Mrs D's pension when they completed the pension transfer in November 2022. I therefore think that HMRC had been told by Mrs D that Aviva's error was to incorrectly calculate her transfer value, but I don't think that this was the case.*

*The reply that Mrs D has received from MoneyHelper refers to a telephone conversation with Mrs D. MoneyHelper say in their written reply to Mrs D: "you mentioned that the additional amount was due to a miscalculation of the transfer value". But as I've said above, I don't think that Aviva miscalculated Mrs D's transfer value. I therefore think that MoneyHelper's reply was based on this wrong information.*

*Mrs D has said that she became resident in Canada in 2005. Mrs D has therefore not been resident in the UK at any time during the five tax years before the current 2023/24 tax year. Mrs D has also said that she has no UK earned income.*

*I think that this means that a tax relieved pension contribution cannot be paid into Mrs D's Firm A pension plan.*

*As I've said above, when Aviva made their offer of £2,671.74 to Mrs D, they explained that: "As any pension payment made directly to a customer would be taxed, we've made the same assumption, so 25% is tax free and the rest is the same as if basic rate tax had been*

deducted. However, this doesn't need to be reported to HMRC as this is a compensation payment".

Mrs D has said that she wants Aviva to provide her with a "tax receipt" so that she has evidence of the tax that Aviva have deducted from her compensation payment. However, Aviva have said: "The cash compensation is reduced by a notional amount which takes into account that had the money been in a pension until retirement 25% would be tax free and 75% would be taxable at basic rate. Therefore there is no tax certificate to be issued as no tax has been deducted it is a 'notional deduction' only."

I think that Aviva's has explained why they deducted notional tax from the compensation payment and has also explained that the deduction is only for notional tax and not for any actual tax deducted and paid to HMRC. Aviva therefore also explain why they are unable to issue a "tax receipt" as Mrs D has requested.

Mrs D has said that without a tax receipt she will pay extra tax on the compensation payment in Canada. Mrs D is unhappy about this as it will mean that she has had notional tax deducted from her compensation payment by Aviva and will then also pay a tax charge in Canada.

In response to Mrs D, Aviva have said: "If Mrs D incurs any tax in Canada on the compensation then she should submit a claim to us so she is not worse off. We would need evidence of the tax charge to be provided then we would assess this further claim for compensation".

I think that Aviva are saying that should Mrs D have to pay tax on her compensation payment in Canada then, if she notifies Aviva and provides evidence of the amount of tax paid, Aviva will then compensate her for the Canadian tax. I think that Aviva's offer to compensate Mrs D for any additional tax that she pays in Canada is reasonable.

I therefore think, as I've outlined above, that it's not possible for a tax relieved pension contribution to be paid into Mrs D's Firm A SIPP. I also think that the payment of £2,671.74 made to Mrs D by Aviva is a compensation payment. I also think that as Aviva deducted notional tax from Mrs D's compensation payment then they are unable to produce a tax receipt, as Mrs D wants.

However, Mrs D has said that she will now incur a tax liability in Canada on the compensation payment paid to her by Aviva, and as Aviva made no account of this possible tax charge when they paid compensation to her, I am upholding Mrs D's complaint.

### **Putting things right**

As I've said above, I think that Aviva has now said that it will make a further payment to Mrs D to cover any Canadian tax that she has to pay on the compensation payment of £2,671.74 that she has received from Aviva. As I've also said above, I think that this is reasonable. I therefore think that if Mrs D does have to pay tax in Canada on Aviva's compensation payment of £2,671.74 when she submits her 2023 Canadian tax return, then Aviva should compensate her for the additional Canadian tax.

However, as this will result in Aviva making a second compensation payment to Mrs D, I think that it's reasonable to assume that Mrs D may then have a further Canadian tax liability on this second compensation payment when she submits her Canadian 2024 tax return.

Should this be the case, then I think it reasonable that Aviva should calculate the gross compensation that would need to be paid to Mrs D to cover both any additional Canadian tax

*that would be payable on this second compensation payment, as well as any Canadian tax liability on the first compensation payment of £2,671.74.*

*The resultant gross compensation should then be paid to Mrs D. Otherwise, I don't think that Aviva need to take any further action.*

### ***My provisional decision***

*My provisional decision is that I uphold Mrs D's complaint against Aviva Life & Pensions UK Limited and that Aviva Life & Pensions UK Limited should compensate Mrs D as I have detailed above.*

### **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 Mrs D and Aviva have responded to my provisional decision.

Aviva has said that they're in agreement with my provisional decision.

Mrs D has said Aviva's loss assessment should have been completed on the basis that her transfer value was calculated on either 18 or 19 August 2022, had it not been for Aviva's errors. Mrs D claims that this was when Aviva were in receipt of all documentation needed for the transfer to proceed.

Mrs D has also said that the value of her Aviva pension on 19 August 2022 was £45,169.35, and therefore this is the value that Aviva should have used in their loss assessment. Mrs D has further said that it's this error in Aviva's calculation of her transfer value to which she has previously referred.

Aviva sent Mrs D an email on 3 February 2023 with details of their loss assessment calculation. Aviva had contacted Mrs D's SIPP provider to obtain unit holding information so that they could complete their calculation. In this letter Aviva confirmed that the transfer value used in their calculations was £45,169.35. This is the same figure that Mrs D says Aviva should use and therefore I don't think that Aviva made an error in the calculation of her transfer value in their loss assessment, as Mrs D has said. Instead, I think that Aviva used the transfer value that Mrs D has said should be used.

Aviva completed their loss assessment calculation on the basis that Mrs D's pension transfer of £45,169.35 would have completed on 2 September 2022, had it not been for their errors. I think that this is because Aviva has allowed a period for the transfer to complete, once they were in receipt of all documentation, which I don't think is unreasonable.

When Aviva completed their loss assessment calculation, they told Mrs D that if her adviser wanted to question any of the calculations then they would be happy to look at any of their comments or evidence. I've not seen any evidence to show that Mrs D's financial adviser has questioned Aviva's loss calculation.

The compensation calculated from Aviva's loss assessment has been paid to Mrs D and I think that Mrs D's complaint is about the way that Aviva paid the compensation to her, and not about the amount of compensation paid. I also don't think that Aviva made an error in the calculation of her transfer value.

Mrs D has also said that the compensation calculated by Aviva could “...*be treated under the ‘Small lump sum payments made after transfer-out’ guidance in PTM063700*”.

However, I think that this guidance would apply when a member retains small rights in a registered pension scheme after a transfer out has been completed. Any such small lump sum could then be treated as an authorised member payment provided that certain conditions are met. Any such payment would however be subject to tax, and details of the tax rules applying are also set out in the guidance.

But I don’t think that this guidance would apply in this case. I think that Mrs D fully transferred out the pension benefits in her Aviva plan in November 2022 and I’ve not seen any evidence to show that Mrs D retained any rights in her Aviva pension thereafter.

Aviva wrote to Mrs D on 31 October 2022 to explain that if her transfer proceeded then they would write to Mrs D’s SIPP provider to ask for further information to allow them to complete their loss assessment. Aviva went on to say that once their loss assessment was complete then they would let Mrs D know their findings.

As I’ve said above, Aviva then set out full details of their loss assessment to Mrs D in their email of 3 February 2023, once they’d heard back from Mrs D’s SIPP provider. In this email Aviva confirmed that they had calculated the difference in the transfer value paid to Mrs D’s SIPP on 24 November 2022 and the transfer value that would have been paid on 2 September 2022, had their errors not delayed the transfer.

Aviva went on to explain that they had contacted Mrs D’s SIPP provider to establish the unit holdings that had been purchased in Mrs D’s SIPP when the transfer completed on 24 November 2022 as well as the unit holdings that would have been purchased had the transfer completed on 2 September 2022.

Aviva set out details of each set of unit purchases, and the difference in value between them, and their assessment identified that Mrs D had suffered a financial loss. Aviva then confirmed the amount of financial loss suffered, which was £3,143.22, and this figure was used to compensate Mrs D.

I therefore don’t think that Aviva miscalculated Mrs D’s transfer value, or that the compensation is a “*pension supplemental transfer value*” as Mrs D has claimed. I also don’t think that Mrs D retained any pension benefits within her Aviva pension plan once the transfer out was completed on 24 November 2022.

Instead, I think that Aviva completed an assessment to confirm the financial loss that Mrs D had suffered due to the delays that Aviva had caused. The loss assessment was completed using information provided by Mrs D’s new SIPP provider to establish the difference in unit holdings purchased, as I’ve explained above.

I therefore still think that the loss of £3,143.22 calculated by Aviva is a compensation payment, as I said in my provisional decision.

I will now turn to how Aviva should pay this compensation to Mrs D.

Mrs D has said in her response that: “*By insisting that I accept the cash compensation option, and deducting a notional tax amount, Aviva has unnecessarily disadvantaged me*”.

Mrs D says that this is because the notional tax Aviva deducted is not documented, and as a result she can't claim foreign tax credits in Canada. Mrs D has said that this means she will pay tax on the compensation payment in Canada. Mrs D has now said that her marginal tax rate in Canada for several years has been "*approximately 17% +/-2%*", and she will therefore pay tax at this rate on her compensation payment of £2,671.74.

In my provisional decision I'd said that the deduction made by Aviva was a notional one, and not an actual tax deduction. I'd also explained why I thought that Aviva's approach in deducting notional tax was reasonable and I don't think that Mrs D has presented any additional evidence to say why Aviva's approach in deducting notional tax wasn't reasonable.

Mrs D has also said that Aviva's offer to compensate her for the additional Canadian tax she will incur on the compensation payment is not a firm commitment. But in my provisional decision I had set out details on how Aviva should now compensate Mrs D for any additional tax that she pays in Canada.

Mrs D has said in her response to me that she wants Aviva to pay the compensation into her SIPP. Aviva has already paid the compensation of £2,671.74 to Mrs D and I think that Aviva's offer to compensate Mrs D for any additional Canadian tax she has to pay on the compensation payment is reasonable. I think that this will mean that Mrs D will benefit from the compensation payment she's received without losing any of this compensation payment to Canadian tax.

Mrs D has also said that she will have Canadian tax to pay on any further compensation payment she receives. But as I'd said in my provisional decision, I think that Aviva should compensate Mrs D for any Canadian tax that she pays on her compensation payment when she completes her 2023 tax return and Aviva should also compensate Mrs D for any Canadian tax that Mrs D would have to pay on this second compensation payment. I still think this is fair and reasonable.

As I've said above, I still think that the payment of £2,671.74 made to Mrs D by Aviva is a compensation payment. I therefore don't think that it is part of a miscalculated transfer value, or any retained pension rights that can be transferred into Mrs D's SIPP. I've also said that Aviva's offer to compensate Mrs D for any additional Canadian tax she has to pay is reasonable.

However, as I'd said in my provisional decision, as Aviva made no account of a possible tax charge in Canada when they paid compensation to her, I am upholding Mrs D's complaint.

### **Putting things right**

In my provisional decision I'd set out details on how Aviva should compensate Mrs D for any additional tax that she will pay in Canada on the compensation payment she's received, and any tax she has to pay on this further compensation payment.

However, in response to my provisional decision, Aviva has asked for clarification on how they calculate the tax on the second compensation payment as they would not know whether any tax is due until Mrs D completes her 2024 tax return.

To assist, I have set out the following as an example to show I how think the calculation should work. However, the exact rate of tax applying will not be confirmed until Mrs D has completed her 2023 Canadian tax return. Aviva will therefore need to set out their own calculations once Mrs D has submitted her 2023 Canadian tax return and provided evidence to Aviva of any tax she has paid on her compensation payment of £2,671.74.

Mrs D has already said what rate of tax she ordinarily pays in Canada, which she has said is 17%, +/- 2%. I therefore think that if Mrs D pays tax at this rate on her 2023 income, then the likely amount of Canadian tax that she would pay on the compensation payment of £2,671.74 would be £454.20, +/-2%. ( $£2,671.64 \times 17\% = £454.20$ )

I think it reasonable to assume that Mrs D would then need to declare the amount of extra compensation paid of £454.20 as part of her 2024 Canadian tax return, which if she still paid tax at 17%, +/-2%, would incur an addition tax charge of £77.21, +/-2%. ( $£454.20 \times 17\% = £77.21$ )

I also think that this extra compensation payment of £77.21 would then incur a further tax charge of £13.12, +/-2%, ( $77.21 \times 17\% = £13.12$ ) and the extra payment of £13.12 would incur a further tax charge of £2.23, +/-2% ( $£13.12 \times 17\% = £2.23$ ).

I appreciate that this further payment of £2.23 would incur a tax charge of 38p, but to simplify matters, I think it reasonable that once any additional tax due falls below £1, then no further amounts need to be applied.

I therefore think that, in this example, Aviva would pay Mrs D £546.76 ( $£454.20 + £77.21 + £13.12 + £2.23$ ) to compensate for any additional Canadian tax charges that she would incur.

Aviva has also said that they wouldn't know if any tax was due on any further compensation payments until Mrs D has completed her Canadian 2024 tax return. But Mrs D has said that her marginal tax rate in Canada for several years has been 17%, +/-2%.

I think that Mrs D has said that her Canadian tax rate has been consistent for several years. I therefore think it reasonable for Aviva to assume that the rate of tax that Mrs D pays on the compensation payment of £2,671.74, when she's completed her 2023 Canadian tax return, is the same tax rate that is then applied when calculating the compensation to be paid to Mrs D on any further compensation payment.

Mrs D has said that to evidence any Canadian tax that she pays on the compensation payment, her accountant would need to produce two sets of 2023 tax returns, one including the compensation payment and the other not. Mrs D has said that this will result in her paying additional fees to her accountant, and she will have to share details of her whole finances with Aviva, which she doesn't want to do.

Aviva has said that they would need evidence of any extra tax that Mrs D has to pay in Canada on the compensation received, which I think is reasonable. But Aviva hasn't yet specified what evidence it would need and has therefore not said that Mrs D's accountant will have to produce two sets of tax returns, as Mrs D has said.

I therefore think that Aviva will need to confirm to Ms D what evidence they need Mrs D to provide to confirm the Canadian tax paid on the compensation payment of £2,671.74.

I think that if Mrs D does have to pay any extra fee to her accountant to produce the evidence requested by Aviva, then it's reasonable for Aviva to pay Mrs D for any additional accountancy fee she incurs for providing this evidence.



**My final decision**

My final decision is that I uphold Mrs D's complaint against Aviva Life & Pensions UK Limited and Aviva Life & Pensions UK Limited should compensate Mrs D as I had detailed in my provisional decision and as I have further explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 21 December 2023.

Ian Barton  
**Ombudsman**