

The complaint

Mrs N complains about the service she received from Aviva Life & Pensions UK Limited (Aviva) when she sought to make a personal pension contribution.

What happened

The history leading up to this complaint is well known to the parties and not generally in dispute. The crux of the complaint concerns how to put things right, so I have only summarised information relevant to that determination.

In February 2023 Mrs N was looking to make a pension contribution of £20,000 for tax year 2022/23 and contacted Aviva as she had a pension with them. She told this service she had no other pension provision at this time.

On 14 February 2023 Mrs N phoned Aviva and the person she spoke with confirmed that she would be able to contribute to her existing plan and provided Mrs N with the details for her to do so.

Mrs N arranged payment of £20,000 on 9 March 2023 using the details she was given by Aviva. She let Aviva know about this payment the same day and was told that the payment would be applied to her plan and Aviva would provide her with confirmation when this was complete.

On 16 March 2023 Mrs N received a letter from Aviva letting her know that her pension plan was a “Protected Rights rebate only” plan and could not accept any payments. Aviva’s letter further explained “once we have received [the £20,000 payment] we will arrange to refund it to the source of payment.”

The next day, Mrs N called Aviva again to enquire about the payment to her pension plan. She was told that she would need to fill out a form and a new “segment of [her] plan” which would be linked to her current plan would be set up. Mrs N completed this form and emailed it to the address she was given by Aviva on 19 March 2023. She then followed up with a further call on 22 March 2023, as she hadn’t yet received confirmation that this had been received. During the call she was told she should hear something shortly but was also advised to send the form to a different email address, which Mrs N promptly did.

Then on 10 April 2023 Aviva sent Mrs N a letter confirming that her policy could not accept any payments and that a refund would be issued shortly. Mrs N subsequently complained to Aviva.

On 19 May 2023 Aviva sent Mrs N a letter confirming it had refunded the £20,000 payment to her bank account.

The same day, Aviva issued its final response to Mrs N’s complaint. It upheld the complaint agreeing that she had been provided with poor service. It offered her £200 for the distress and inconvenience the errors caused to her.

Mrs N didn't accept this offer and brought her complaint to the Financial Ombudsman Service. She said as a result of Aviva's errors, both in the information she was given on multiple occasions by Aviva and that the payment she made in March wasn't refunded until May, she suffered financial harm. Specifically, Mrs N claims she could not invest these funds in a pension before the end of the 2022/23 tax year because Aviva hadn't refunded them to her and as a result, she lost out on tax relief. She also thought she should receive interest on the payment for the time Aviva improperly retained it.

In an effort to resolve matters, Aviva proposed that it pay £400 for the trouble and upset it had caused to Mrs N and interest on the funds from 14 February 2023 to 19 May 2023. Aviva also said it would consider the pension tax relief lost if Mrs N could evidence "an alternative personal pension policy which the policyholder held which would have been able to invest the money before the end of the 2022/2023 tax [year]". Aviva also later explained Mrs M may be able to "carry forward" any of her unused annual allowances from the previous three years.

Mrs N didn't accept this offer. She maintained that Aviva should compensate her for the tax relief she missed out on for tax year 2022/2023. She explained that the pension she held with Aviva was the only plan she had in place at that time. And since Aviva retained the funds she intended to contribute to a pension during the 2022/2023 tax year beyond the end of that tax year, she wasn't able to make a contribution, regardless of whether she had an alternate pension plan.

Our investigator reviewed the evidence and initially agreed that Aviva's offer was fair but subsequently said that in the circumstances, Aviva should cover any tax relief for the 2022/2023 tax year and upon evidence, any potential tax charges on her carried forward contribution allowance in the 2023/2024 tax year.

Unfortunately, Aviva didn't respond to the investigator's subsequent view, so the complaint has been passed 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, like the investigator, I consider Aviva's current offer doesn't go far enough, so I'm upholding Mrs N's complaint and directing Aviva to do more to put things right.

Aviva contends it shouldn't be responsible for any lost tax relief as Mrs N could never have made a contribution to her existing plan with them. Therefore, Aviva argues that Mrs N is not in a worse position than she would have been but for their mistakes. Having reviewed everything that has been provided by the parties, I do not agree. Although Mrs N did not have another pension plan to contribute to at the time, if Aviva had provided her with the correct information from the outset, I consider she had the funds and plenty of time to set up another plan and make the payment before the end of the 2022/2023 tax year.

Where a business makes an error, as Aviva did here, this service usually looks to put the customer in the position they would have been in had the error not been made. Having carefully considered everything that happened, I am persuaded that but for Aviva's actions, Mrs N would have been able to contribute £20,000 to a personal pension plan before the end of tax year 2022/2023. I understand Mrs N is a basic rate taxpayer, so she would have received tax relief on this contribution at the basic rate of 20% of her gross contribution.

Furthermore, Mrs N is self-employed and in 2022/2023 earned £20,000. Therefore, £20,000 was the maximum she could contribute and receive tax relief on for that tax year. Since this contribution wasn't made, she could potentially "carry forward" this allowance into the next tax year. However, Mrs N said she intends to contribute her annual earnings (circa £20,000) to a pension each year going forward. Because of this, she has no ability to carry forward the unused contribution amount without facing an annual allowance charge as this would exceed her annual earnings. So I don't consider Aviva's suggestion that she can use the carry forward an appropriate solution to the tax relief Mrs N has not received.

Had things gone as they should have, I am satisfied that Mrs N would have invested £20,000 in a personal pension arrangement before the start of the 2023/2024 tax year. She would have received tax relief on this of 20% (£4,000). She would have then been free to invest the additional £20,000 she intended to in the next tax year (2023/2024) without concern for any annual allowance charge.

Mrs N has told this service she opened a personal pension plan with another provider (I'll refer to it here as Provider B) during the 2023/2024 tax year and provided us with a copy of her February 2024 statement. But as explained above, Mrs N does not have any carry forward allowance that would permit her to contribute a further £20,000 to this plan, which ought to have been invested before the end of the 2022/2023 tax year. Therefore, if Mrs N were to make this contribution now, she may receive a tax charge on this contribution, in addition to the lost tax relief. To put this right, upon evidence from Mrs N that she has made a further contribution to her pension plan (up to £20,000), which causes her to exceed her annual contribution limit, Aviva will promptly reimburse Mrs N for the tax charge for that tax year.

I have not considered an award for any investment loss on the £20,000 that should have been invested before the start of the 2023/2024 tax year. Mrs N has not sought this as redress here and it was not considered by the investigator. But for completeness, I don't consider an award for investment loss warranted in these circumstances as Mrs N could have mitigated this loss by investing the £20,000 as soon as Aviva returned this sum to her.

Aviva has also offered Mrs N £400 for the trouble and upset its mistakes caused her. In the circumstances, I consider this offer fair and reasonable.

Putting things right

My aim is to put Mrs N as close to the position she would probably be in now if Aviva hadn't provided her with incorrect information, thereby delaying her pension contribution beyond the end of tax year 2022/2023.

Aviva should pay Mrs N the compensation previously offered to her of:

- 8% interest on the £20,000 from 14 February 2023 to 19 May 2023; and
- £400 for the trouble and upset its mistakes caused her.

Additionally, Aviva should:

- Compensate Mrs N for the lost tax relief by contributing £3,200 to Mrs N's personal pension plan with Provider B. This payment will be treated as a contribution so tax relief of 20% (£800) will be added at source, meaning Mrs N will receive the full £4,000 owed in tax relief for the 2022/2023 tax year. If this is not the case, Aviva should be responsible for making up the difference to ensure Mrs N benefits from the full £4,000 she ought to have received in tax relief.

- Reimburse Mrs N for any tax charge resulting from her pension contribution (up to £20,000) exceeding her annual allowance, within 28 days of receipt of such evidence from Mrs N.

My final decision

My final decision is that I uphold Mrs N's complaint.

In order to resolve this matter, I order Aviva Life & Pensions UK Limited to pay the redress to Mrs N as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 7 October 2024.

Jennifer Wood
Ombudsman