

The complaint

Mr P complains that Aviva Life & Pensions UK Limited erroneously paid him an extra £10,000 drawdown payment from his pension.

What happened

Mr P has a drawdown pension plan with Aviva.

On 31 May 2022 Mr P completed a form for a drawdown request of £10,000 from his pension. He sent the form along with a covering letter to Aviva.

Mr P says that around a week later Aviva sent him a second drawdown request form to complete. Mr P completed and returned the form to Aviva on 11 June 2022 with a new covering letter explaining it was the second time he'd had to complete the form.

Aviva say they received the first form from Mr P on 6 June 2022 and made a payment of £7,048 on 13 June 2022. Aviva said they then received the second form on 14 June 2022 and made a further payment of £5,677.45 on 15 June 2022.

Aviva sent Mr P confirmation letters in relation to each payment on 13 June 2022 and 18 June 2022 respectively.

In September 2022 Mr P was sent his annual statement for his pension which showed the total drawdown payments for the year was £20,000.

Mr P says he didn't notice the second payment into his account. He says Aviva attempted to contact him in February 2023 about his payments and it was only then that he realised he'd been paid two drawdown payments in error.

On 23 March 2023 Aviva contacted Mr P and told him that he could return the second drawdown payment if he didn't want to keep it. On 11 May 2023 Aviva again said Mr P could return the payment. They said they'd then be able to send corrective tax reporting to HMRC.

In April 2023 Mr P complained to Aviva. He said he'd only completed the second request after Aviva sent out a second set of forms for him to complete. Which he thought his cover letters made clear.

He said he'd made a complaint to Aviva the previous year and so he thought the second payment was further compensation in relation to his previous complaint, but it was still around £700 less than he thought he should be paid. He also said his P60 should reflect only one payment of £10,000 for the year.

To put things right Mr P asked Aviva to reinstate the £10,000 to his plan with interest; correct his P60; pay back management charges for the last two years; pay the remaining £719.75 from his previous complaint; and pay him compensation for the inconvenience, distress, pain and suffering he'd been caused.

In their response Aviva apologised for making a duplicate payment of Mr P's request to take

£10,000 from his plan. They noted the second request was taxed differently at an emergency rate, but said they should have queried and checked the payment prior to it being made.

Aviva said they would reinstate £10,000 into the plan if Mr P returned the payment. And they'd contact HMRC to put his policy back to the correct status. Aviva also made a payment of £100 for the trouble and inconvenience they'd caused Mr P.

Aviva went on to say the P60 that had been issued was correct as it showed £20,000 of withdrawals and they wouldn't return two years' of fees as charges still applied to the policy.

Finally, Aviva said they wouldn't pay Mr P any additional compensation for the complaint they'd dealt with in 2021. And in their previous response, they'd explained the rights Mr P had to approach the ombudsman service should he not have been satisfied.

Mr P brought his complaint to our service and his complaint was passed to an investigator.

Aviva told our investigator that they shouldn't have upheld Mr P's complaint as they'd actioned the requests he'd sent them in a timely manner. But our Investigator disagreed. They said Aviva ought to have checked with Mr P when they received two requests in a short period of time, especially given the content of the covering letters. However, our investigator also thought Mr P ought to have noticed the additional payment and questioned it sooner.

Our investigator thought Aviva had acted fairly when saying Mr P could return the funds and they'd be reinstated. She didn't think it was reasonable to ask Aviva to refund two years' of fees or make any changes to the compensation already offered which she thought was fair.

Mr P didn't agree with our investigator's opinion. He said Aviva hadn't properly explained what had happened and hadn't done enough to put right the stress they'd caused. He said £100 was wholly insufficient. As Mr P disagreed, the complaint has been passed to me for a 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've reached the same outcome as our investigator for the same reasons. I'll explain why.

I appreciate Mr P may want me to get to the bottom of, and make a finding on why Aviva sent him a second set of forms to fill in - which is ultimately what led to the second payment being made. But I don't think that's a finding I need to make in order to come to a fair and reasonable outcome in this complaint.

Mr P sent two copies of the drawdown forms to Aviva. But I agree with Mr P's testimony that the covering letters with the forms ought to have made Aviva aware that the second form was a duplication of the first. It said Mr P has '*completed Income Drawdown Variation Application Form for the second time as requested.*' The word 'second' was italicised to add emphasis.

Mr P also included the same illustration reference in both forms, and I agree with his view that it would be unusual to make two identical requests in quick succession, when just one request of £20,000 could have been made.

Aviva originally accepted that the second request *'should have been queried and checked prior to the payment being made'*. Despite Aviva later changing their position, I think their first response was fair. I say that because if there was any doubt in Mr P's instructions Aviva ought to have checked with him first before making the payment. I don't think that would have caused undue delay and it would have demonstrated Aviva were exercising due care and skill while also acting in the best interest of their client which are principles that regulated businesses like Aviva must follow.

That being said, I also think it ought to have been apparent to Mr P that an error had been made. I say that because Aviva sent him a letter after each of the two payments. The letters showed the payments were made on different dates. The first letter also showed that after the payment had been made Mr P had £119,146.18 left in his plan. The second letter noted that Mr P had the reduced amount of £108,354.09 left in his plan.

Both letters were similar in appearance, so I can understand why Mr P might have thought, on first glance, they were duplicated. However, the letters were quite clear that two different payments had been made and the affect that had on the balance of Mr P's pension.

Mr P was also sent a yearly statement for his pension in September 2022. Under the section *'Payments out during the statement period'* it said there had been income drawdown payments totalling £20,000. Which again I think ought to have made it clear to Mr P that two payments had been made.

Mr P says he assumed the second payment of over £5,000 was in connection with a complaint he'd previously made. But I don't find that to have been a reasonable assumption. I can't comment on the merits of Mr P's previous complaint – as he didn't bring that complaint to our service at the time. But it appears Aviva had already paid him compensation the previous year and so it would be highly unlikely they'd make another compensation payment without first explaining to Mr P why that was.

In deciding what a fair resolution to this complaint is I've considered Mr P's request for two years' of fees to be returned to him. However, the fees relate to Aviva's administration of Mr P's pension. They are part of the terms of his plan which would have always been due and don't relate directly to the erroneous drawdown payment. So, it wouldn't be reasonable for me to direct Aviva to refund them.

In all the circumstances of the complaint, I think Aviva's offer to accept the erroneous payment back into the pension is fair. I say that because our services approach to redress is to seek to put a consumer into the position they would be but for a business' mistake. And Aviva's offer to reverse the payment would have achieved that.

Aviva also paid £100 for the upset and inconvenience caused by the mistake. I think that fairly compensates for the distress and inconvenience because, while I think Aviva ought to have questioned the second payment before making it to Mr P, he was in possession of enough information himself that he ought to have also questioned the second payment earlier. He would have been inconvenienced, especially if he'd already spent the money, but Aviva have offered to put it right and I think that's fair.

My final decision

Aviva Life & Pensions UK Limited has already paid £100 to settle the complaint and I think this offer is fair in all the circumstances. So, Aviva need not do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 March 2024.

Timothy Wilkes
Ombudsman