

The complaint

Mr W complains about the poor level of service provided by Aviva Life & Pensions UK Limited (“Aviva”) which led to a delay in receiving retirement benefits from his Section 32 policy. He says that the retirement process started in September 2020 but didn’t complete until September 2022. Further, he says that the wait to receive the tax-free lump sum from the policy delayed his ability to buy a property, resulting in him incurring unnecessary rental costs.

To put things right, Mr W wants Aviva to pay him compensation of around £10,000.

What happened

The events leading up to this complaint were set out in detail by our investigator in her assessment which she provided to both Mr W and Aviva. I don’t intend to repeat here in detail what our investigator stated but will instead provide a summary. For simplicity, figures in this decision are given in pounds with the pence omitted.

Mr W had built up benefits in a Section 32 policy provided by Aviva. The policy included transitional tax-free cash above the standard 25%. This is known as protected tax-free cash (“PTFC”). Mr W’s entitlement to PTFC became effective on 6 April 2006. On that date the PTFC figure was £57,267. The figure wasn’t static. Rather, it fluctuated and had to be manually revalued to the date Mr W took retirement benefits, whenever that occurred. The entitlement to PTFC would be lost on an individual transfer to a new pension plan – in that scenario, Mr W’s tax-free cash figure would revert to the standard 25% under the new pension plan. The only way Mr W could obtain the PTFC was to fully crystallise the policy and take benefits from Aviva as either a lifetime annuity or a taxable lump sum. Flexi-access drawdown wasn’t an option.

In September 2020, when he was aged 71, Mr W phoned Aviva to discuss the retirement options available under the policy. Over the following two-year period there were multiple phone calls, emails and letters between Aviva, Mr W and his financial adviser regarding the policy.

On 15 September 2022, Aviva received completed retirement forms from Mr W’s financial adviser (that had been issued by Aviva on 28 June 2022). Aviva fully crystallised the policy and paid the following benefits to Mr W:

- £143,065 - revalued PTFC paid on 27 September 2022; and
- £14,051 pa – lifetime annuity, payable monthly in arrears from 14 October 2022.

This complaint

Mr W was unhappy about the length of time it took to receive his retirement benefits. He complained to Aviva that he started the retirement process in September 2020 but didn’t receive any benefits until September 2022.

Aviva upheld Mr W’s complaint in part. It conceded that it had caused a delay between 25

May 2021 (when it received a letter of authority from Mr W's financial adviser) and 7 September 2021 (when it sent to the financial adviser the final piece of policy information he had requested). But it didn't think it was responsible for any other delays. It stated that after receiving the completed retirement forms from the financial adviser on 15 September 2022, it paid Mr W's PTFC and set up the lifetime annuity in a timely and efficient manner. Aviva apologised to Mr W and paid him £150 compensation for the delay it had caused between 25 May 2021 and 7 September 2021.

Mr W didn't accept Aviva's final response because he thought his financial loss was significantly greater than £150. He explained that this was because the delay caused by Aviva in receiving his PTFC meant he had to pay rental costs longer than anticipated while waiting for sufficient funds to be available to buy a new property. He said that had Aviva paid his PTFC earlier, he would've been able to buy the new property sooner than he did. So he wanted Aviva to compensate him for the rental costs incurred during the period of delay.

Mr W referred his complaint to the Financial Ombudsman Service. Aviva contacted us to state it wanted to be proactive in resolving this complaint. It offered to pay Mr W additional compensation of £250 (in addition to the £150 it had previously paid him). Aviva repeated its position that it didn't believe it was responsible for any other delays either side of 25 May 2021 and 7 September 2021. It stated that before and after those dates there were delays and a lack of activity from both Mr W and his financial adviser for which it shouldn't be held responsible.

Our investigator's view

Our investigator largely agreed with Aviva's position but thought it was also responsible for a delay between 16 April 2021 and 25 May 2021. She explained why in her findings. That said, she thought Aviva's offer to pay additional compensation of £250 was reasonable in the circumstances taking into account the additional delay between 16 April 2021 and 25 May 2021. Our investigator wasn't persuaded to make any award for Mr W's rental costs. This was because she thought he would've incurred the same rental costs even if the PTFC had been paid sooner than 27 September 2022. This was on the basis that Mr W had previously disclosed he was also relying on tax-free cash lump sums from other pension plans with different providers to facilitate the purchase and didn't receive any of those other lump sums until 2023.

Aviva accepted our investigator's view. However, Mr W didn't agree. He provided additional comments setting out his reasons why. He reiterated previous comments that the compensation offered by Aviva was inadequate. Our investigator considered those additional comments but wasn't persuaded to change her view. Since agreement couldn't be reached, this complaint has now been allocated to me to review and decide. This is the last stage of our process.

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.

Scope of this final decision

Mr W has suggested that redress should be split equally between Aviva and his financial adviser. This is because he believes his financial adviser is partly responsible for the delay in him receiving his retirement benefits from his policy.

I want to make clear to Mr W that our process isn't designed to deal with multiple parties under the same complaint reference. Each case is set up against a single business. This means that under this final decision I can only consider the acts and/or omissions of Aviva. Any concerns Mr W has about other regulated businesses should be taken up with that business to give it the opportunity to investigate and resolve the matter.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances. I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties to this complaint. So if I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Having considered the evidence, I've reached the same conclusion as the investigator and for largely the same reasons. I'll explain why.

Disclosure of entitlement to PTFC

Mr W has emphasised one key aspect which he believes was attributable to the delay in receiving retirement benefits from his policy. He says that it wasn't until September 2022 that Aviva confirmed his revalued PTFC figure or that it would be lost on an individual transfer to a new plan. He says that the failure to disclose this information prevented him and his financial adviser from being able to determine whether he should take benefits direct from Aviva or transfer to a new plan so that he could utilise flexi-access drawdown. This is a key element of this complaint.

I've reviewed the evidence and have a different view. Mr W has complained about the period between September 2020 and September 2022 so I'll focus on this. I can see that he initially contacted Aviva on 30 September 2020 to discuss his options.

He called again on 13 October 2020 to discuss a potential transfer to a new pension plan. Aviva told Mr W during that call he would need to obtain financial advice before he could transfer due to the PTFC available under his policy.

The transfer pack issued by Aviva on 20 October 2020 explained on the first page under the heading '*Protected tax-free cash*', "*As this is a replacement policy, (where benefits were transferred previously from a former employer's Occupational Scheme), then any protected tax-free cash will be lost unless all of the HM Revenue & Customs (HMRC) conditions for a further transfer are met. You can find more information on this on the HMRC website www.hmrc.gov.uk/manuals/rpsmmanual". So Mr W was told that any PTFC available under his policy would be lost on transfer to a new pension plan (which is why Aviva told him on 13 October 2020 that he needed to obtain financial advice before transferring).*

I can see from Aviva's records that Mr W called again on 5 November 2020 to say he intended to take his "40%" PTFC. So, although Mr W wasn't aware of the precise figure, he was aware his entitlement to tax-free cash under his policy was greater than the standard 25%.

According to Aviva's records, after that phone call on 5 November 2020, it didn't receive any further contact from either Mr W or his financial adviser until 14 April 2021 – on this date, Mr W called Aviva and told it that his financial adviser would be sending it transfer request forms. Aviva's records show that it warned Mr W during the call that his PTFC would be lost unless the residual fund (after taking the PTFC) was used to secure a lifetime annuity

provided by Aviva or took it as a taxable lump sum. During that call Mr W stated, *“My intention is to try and drawdown as much of the fund as possible for tax-free cash and I have enhanced tax-free cash and I know from discussions with some of your colleagues that there is more complication as far as your scheme is concerned as I understood before in the past that to get the enhanced tax-free cash I would have to take up some annuity first with you. Is that right?”*. Aviva confirmed Mr W’s understanding.

Then on 15 April 2021, Mr W’s financial adviser emailed Aviva and, amongst other things, stated, *“As you know, [Mr W] is looking to take his enhanced tax-free cash and convert the residual fund to Flexi-Access Drawdown”*. I haven’t seen any evidence that shows Aviva had led either Mr W or his financial adviser to believe it was possible to take the PTFC and use the residual fund for flexi-access drawdown. So it’s unclear why both Mr W and his financial adviser believed that was an option.

Mr W’s PTFC figure on 6 April 2006 was £57,267. As explained above, the PTFC figure wasn’t static. Rather, it fluctuated and had to be manually revalued. On 7 September 2021, Aviva issued a retirement options and quote pack that confirmed the revalued PTFC figure on that date was £136,443. On 28 June 2022, Aviva issued another retirement options and quote pack that confirmed the revalued PTFC figure on that date was £140,325. The packs included a warning, *“You are entitled to tax-free cash greater than 25% of your pension pot. You may lose this right if you switch provider”*.

There are several other pieces of evidence which shows that Aviva repeatedly told Mr W and his financial adviser the same information:

- he was entitled to PTFC;
- it would be revalued up to the point of payment;
- to secure the PTFC, Mr W had to use the residual fund to secure a lifetime annuity provided by Aviva or take it as a taxable lump sum; and
- the PTFC would be lost on transfer to a new pension plan.

All this evidence pre-dates September 2022. Overall, I’m satisfied that from, as early as October 2020, Aviva made Mr W aware of his entitlement to PTFC and the conditions that applied if he wanted to secure it. So I don’t agree with his view that he wasn’t aware of this information until September 2022, as he asserts.

Did Aviva cause an undue delay?

I agree with our investigator’s view that Aviva caused a delay between 16 April 2021 and 7 September 2021. Since all parties agree that Aviva caused a delay during this period, I don’t see the need to comment further on this.

It’s important to note here that Aviva couldn’t pay any retirement benefits until such time as it received completed forms from Mr W or his financial adviser. And it wasn’t Aviva’s role or responsibility to chase Mr W or his financial adviser to check what he wanted to do. So any delays caused by Mr W or his financial adviser isn’t Aviva’s fault.

The evidence shows that following issuance of the retirement options and quote pack on 7 September 2021, Aviva received multiple phone calls and emails from Mr W’s financial adviser over the next several months. My interpretation of the evidence is that the financial adviser repeatedly sought to establish the same information; whether Mr W could take his PTFC from Aviva and transfer the residual fund into a flexi-access drawdown account. And on each occasion Aviva repeated its previous explanation about the conditions that applied to secure the PTFC. I cannot see that Aviva provided any incorrect or misleading information to either Mr W or his financial adviser on this point.

On 9 June 2022, the financial adviser wrote to Aviva and stated:

“Following a full financial review of [Mr W’s] retirement planning needs, I have advised [Mr W] to take the protected tax-free cash from the above policy and have this paid immediately to him. Once paid, I will then advise [Mr W] on the most appropriate course of action for the residual fund”.

The financial adviser didn’t include completed retirement forms to enable Aviva to pay retirement benefits. It seems that the financial adviser believed Aviva could pay the PTFC and ‘park’ the residual fund to be dealt with later. But that simply wasn’t possible. I haven’t seen any evidence that Aviva led the financial adviser to believe it was possible to do this. Aviva had previously and repeatedly explained the conditions that applied to secure the PTFC. There was no option to ‘park’ the residual fund, pending further instructions.

In response to the financial adviser’s request on 9 June 2022, Aviva issued a retirement options and quote pack on 28 June 2022. Aviva then didn’t hear anything from either Mr W or his financial adviser until 15 September 2022 when it received the completed retirement forms from Mr W’s financial adviser (that had been issued by Aviva on 28 June 2022).

In making this complaint Mr W stated that the retirement payment process started in September 2020. But this isn’t supported by the evidence as shown above. Aviva couldn’t take any action to start the process of paying Mr W’s retirement benefits until it received completed forms retirement forms. It’s my view that once Aviva received the completed forms from the financial adviser on 15 September 2022, it paid Mr W’s retirement benefits in a timely and efficient manner.

Overall, the outcome of the above is that I share our investigator’s view that Aviva caused a delay between 16 April 2021 and 7 September 2021. I haven’t seen any evidence that persuades me Aviva caused any delays either side of those dates.

Putting things right

There are two elements of compensation that I can award. The first is any financial loss I find Mr W may have incurred and the second is for distress and inconvenience.

Financial loss

I’ll consider financial loss first. As explained above, the PTFC figure wasn’t static. Rather, it fluctuated and had to be manually revalued to the date Mr W took retirement benefits, whenever that occurred. I’ve thought about whether Mr W has suffered a financial loss linked to the delay caused by Aviva. I don’t think he has. This is because the evidence shows that the policy fund value was increasing throughout the period of the delay. It’s important to note here that the greater the fund value, the greater the revalued PTFC figure and lifetime annuity income. The policy fund value was as follows on these dates:

- £349,198 on 30 September 2020
- £373,296 on 6 September 2021
- £388,823 on 28 June 2022
- £399,397 on 8 September 2022

The fund value was steadily increasing over time. This means that it’s likely Mr W’s revalued PTFC payment and lifetime annuity income secured in September 2022 is greater than would’ve been the case had retirement benefits been secured earlier taking into account the delay caused by Aviva. I haven’t seen any evidence that makes me think otherwise.

Mr W has requested that I make an award in respect of the additional rental costs he says he incurred because of the delay in receiving his PTFC from Aviva which delayed his ability to buy a property. When considering whether I should ask Aviva to contribute towards or even cover such costs, I have to be convinced that these costs arose as a *direct* consequence of Aviva's errors. I'm not convinced that they are. I think Mr W would've still incurred the same rental costs even if the PTFC had been paid sooner than 27 September 2022. This is because he was also relying on tax-free cash lump sums from other pension plans with different providers to facilitate the purchase and didn't receive any of those other lump sums until 2023.

Distress and inconvenience

I've considered any distress and inconvenience Mr W may have suffered. Overall, I think it's clear he experienced some frustration and disappointment caused by Aviva. So I think it's fair and reasonable to uphold this complaint and make an award for this. Having considered the evidence, I agree with our investigator that fair compensation here is £400. I understand that Aviva previously paid Mr W £150 compensation by bank transfer which I think should be taken into account. This means Aviva should pay the balance of £250 to settle the matter.

My final decision

I uphold this complaint. I direct Aviva Life & Pensions UK Limited to pay Mr W £250 compensation. This is in addition to the £150 compensation it previously paid him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 31 August 2024.

Clint Penfold
Ombudsman