

The complaint

Mr B complains that Aviva Life & Pensions UK Limited (Aviva) misinformed him about the retirement options and features of his Group Personal Pension Plan (PPP), which negatively impacted his pension planning, causing distress and financial losses. He wants the errors corrected and compensation for his losses.

What happened

The selected retirement date of Mr B's PPP was approaching, and Aviva sent him a retirement pack in June 2023, setting out details of how he could take his benefits. His fund was worth around £171,000. Mr B wanted to take (crystallise) some benefits and called Aviva to discuss the options in November 2023. He wanted to crystallise £50,000 of his plan to take the tax-free cash of £12,500. And to make a partial transfer of £71,000 to a new Self Invested Personal Pension with Aviva to allow investment into individual shares. This would leave around £87,500 in the PPP, £37,500 of which had been crystallised and £50,000 which hadn't. Aviva initially said the PPP couldn't facilitate this before saying it could. Mr B gave instructions to crystallise £50,000 of his PPP and completed the application paperwork to open the SIPP and transfer £71,000 to it. Aviva processed the crystallisation on 29 November 2023, paid the tax-free cash and confirmed it was processing the partial transfer to the SIPP.

Mr B contacted Aviva for updates on the progress of the transfer and was given the impression it was in hand. But after many calls Aviva confirmed in late February 2024 that the PPP couldn't make a partial transfer after all. Mr B raised a complaint which was accepted. Aviva apologised and said it had given him incorrect information as the partial transfer should have been carried out before any benefits were crystallised and now only a full transfer was available. It offered Mr B £300 compensation for the inconvenience he'd been caused.

Mr B didn't accept this. He said he would repay the tax-free cash and Aviva should unwind the crystallisation. He said as well as the inconvenience of his retirement planning being disrupted, he was facing investment losses. As the shares he'd intended to invest in through the SIPP had performed better than the Aviva investment funds, and he said the charges were lower. Aviva said it's technical department had confirmed it wasn't possible to unwind the benefit crystallisation due to HMRC rules.

Mr B referred his complaint to our service and our investigator said it should be upheld.

Our investigator said HMRC's Pension Tax Manuals appeared to provide for payments made in error to be unwound. And Aviva should reconstruct the PPP as though benefits hadn't been taken, allowing Mr B to arrange his pensions as he wished. Our investigator said he didn't think the £300 offered in compensation was sufficient given the problem had continued over many months, with Mr B being misled about progress. He said the compensation for distress and inconvenience should be increased to £500.

Mr B accepted our investigators view, but said he felt he would still have investment losses of around £4,650 over the nine months since the SIPP transfer should have been actioned.

Aviva said it accepted the compensation for distress and inconvenience should be increased to £500, but it said having checked again with its technical team it couldn't unwind the benefit crystallisation. This was because whilst it had made an error in the information it gave Mr B; it hadn't made a genuine "clerical error" in the administration of the pension itself which was a requirement of HMRC's rules. It said this was very unfortunate for Mr B, but it didn't see how it could rectify the problem.

Mr B said he'd wanted to draw further pension benefits and hadn't been able to do so due to delays and uncertainty over what was happening. He said this had caused him financial hardship.

As Aviva doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on; 20 December 2024, I explained the reasons why I was planning to uphold the complaint. I said:

It isn't disputed that Aviva provided Mr B with incorrect information and effectively processed his requests in the wrong order, subsequently restricting his options.

Having considered the HMRC Pensions Tax Manual and Aviva's further submissions on this I agree the rules Aviva must follow do not provide for the benefit crystallisation to be reversed. Ultimately as the operator of a tax approved pension scheme it is for Aviva to determine what pension legislation does and doesn't allow. I can't tell it to complete an action that would be against the law. It might be possible to appeal directly to HMRC over this, but I suspect that would be both a long and uncertain process.

I asked Aviva about possible work around solutions that might effectively put Mr B in a similar position to what he'd intended. Perhaps by fully transferring to a new SIPP and then making a partial transfer from the SIPP to a new PPP as the SIPP could make partial transfers. Aviva said this could be done but that it couldn't accept the transfer of crystallised funds into any of its PPPs. I also asked Mr B about his pension investments and the financial difficulties he said he was facing. Mr B said due to financial pressures and concerns about the impending October 2024 Budget he had to make use of the tax-free cash sum he'd been holding (to repay Aviva) and had now crystallised his remaining benefits with Aviva. That meant that a workaround with Aviva was no longer an option.

Mr B said as it wasn't possible to recreate what he wanted the only option was to leave the plan with Aviva. He set out what he considered his financial losses to be.

- 1. That he'd retained £12,500 in cash pending repaying it to Aviva rather than investing it, causing a loss of around £1,450 compared to the return on his ISA investments. Mr B said he'd used other funds for living expenses whilst he'd done this.*
- 2. That the new SIPP investments would have returned around 24% more than the Aviva funds over the period resulting in a loss of around £17,100.*
- 3. That the Aviva PPP fund charge was 0.3% per annum greater than the SIPP charge and he estimated this had cost an extra £225.75.*
- 4. That despite Aviva agreeing to the £500 compensation for distress and inconvenience recommended by our investigator, it still hadn't paid this.*

Mr B said he'd told Aviva about the investments he'd intended to make previously, he thought during a call on 22 February 2024 and in an email of 6 May 2024, referring to Lloyds Bank and Aviva Plc shares and also the returns from the FTSE 100 index. I asked Aviva

about this, and it agreed Mr B had mentioned these investments. It said it would be possible to complete a loss calculation and requested guidance on how it should do this. However, it said as Mr B had now used his tax-free cash for living expenses this showed it was always his intention to do so.

Mr B provided some information about the investments held in his ISA and SIPP with another pension provider in November 2023 (when the transfer to SIPP should have been made) to date. The great majority of his investments were in Lloyds Bank shares followed by Aviva Plc. In his SIPP these two shares and one other represented nearly 90% of the total investments held by value, with a dozen or so other smaller holdings. The statements indicate that Mr B continued to purchase Lloyds Bank shares through 2024 with the proceeds of other sales and income arising from dividends paid to his SIPP. But these two investments weren't the best performing stocks Mr B held over the period, so I think what he has said about making further investments is reasonable and not made with the benefit of hindsight.

I've thought about how this complaint can be best resolved. Mr B has suffered some loss of expectation in that he can't invest exactly how he wanted. But if he were to transfer all the remaining funds into a SIPP it may be possible to broadly recreate the same mix of investments as he intended to hold. In terms of the tax-free cash and possible investment losses on this Mr B did make use of this within 12 months of drawing it having used other funds until then for living expenses. So, I don't think it is reasonable to say this would have been invested long term and it wouldn't be fair to make a comparison with returns available from other types of investment on this element.

In terms of the SIPP transfer Mr B wanted to make I think but for the error in the sequence of transfers it's reasonable to assume the funds would have been available for investment within the SIPP by 5 December 2023. His decision to take further benefits recently was driven by concerns that pension legislation would be adversely changed in the recent Budget, which wasn't a factor in December 2023, so I think he would have made longer-term investments then.

But I don't know exactly how Mr B would have invested. He's mentioned the two shares and the FTSE 100 index. I think it's more likely than not that he would have split the new SIPP investment between these three and it's reasonable to think he would have invested equally into each. It maybe that these investments have performed better than the funds he continued to hold in the Aviva plan. If so, then it is fair that he be compensated for any losses to date. The remedy I've set out below takes into account the different charges between the plan that continued, and the new SIPP Mr B wanted.

Putting things right

I said my aim in awarding compensation was to put Mr B back as closely as possible into the position he should have been in but for the errors made.

Mr B wanted to transfer £71,000 to the Aviva SIPP, and I thought he would have invested the SIPP transfer equally between Lloyds Bank plc shares, Aviva plc shares and a FTSE 100 index tracking investment. And that he would have done so on 5 December 2023 for the shares and 6 December 2023 for the index tracking fund. I said Aviva should calculate the notional fund value available had this happened and compare that to the actual value of the PPP Mr B retained, allowing for costs, and any subsequent payments in or out including Mr B's tax-free cash payment. If the notional value was higher, then Mr T has suffered a loss and I said Aviva should pay that to him subject to a notional adjustment for tax.

And I said Aviva should pay Mr B £500 in total for the distress and inconvenience he has been caused.

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

Mr B accepted my provisional decision.

Aviva also accepted my provisional decision although it proposed a variation to the basis of the loss calculation I'd set out. It proposed that as Mr B had taken his tax-free cash sum from the PPP on 31 October 2024 it should calculate the growth to then. And if this showed a loss then add interest to that at 8% per year simple to date.

I outlined this proposal to Mr B, but he said he preferred my original suggestion that calculations be made to date, citing the strong returns made by the investments he'd intended to purchase in the SIPP.

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 decided to uphold the complaint.

Aviva accepts it made an error and the main issue is to decide how to fairly resolve the complaint. Mr B says but for the error he would have invested differently, and he has shown evidence of that, which I am persuaded by. It may be that the investments Mr B wanted to purchase have produced superior returns to the funds held by his Aviva PPP. If so, he has suffered a loss and as Mr B has said, I think the issue continues to date. So, I think a fair date to run the loss calculations to, is the date our service tells Aviva Mr B has accepted my final decision, should he do so.

As set out in my provisional decision it may be possible for Mr B to then complete a full transfer of his remaining funds and reconstruct the investment portfolio he had in mind in November/December 2023, if he wishes to do so. Mr B has also been considered significant distress and inconvenience by what has happened and it's fair he be compensated for that to.

Putting things right

My aim in awarding compensation is to put Mr B back as closely as possible into the position he would have been in but for the errors made.

Mr B wanted to transfer £71,000 to the Aviva SIPP. I think it's fair to conclude that Mr B would have invested the SIPP transfer equally between Lloyds Bank plc shares, Aviva plc shares and a FTSE 100 index tracking investment. I think it is reasonable that Mr B would have invested the day funds became available in the SIPP dealing account. And based on what did happen, I think that would have been on 5 December 2023, with the two shares purchased that day and the index tracker at the next dealing point, likely 6 December 2023. If a mid-price isn't available for the two shares the opening price on 5 December 2023 should be used.

Aviva must calculate the notional fund value that would have been available had the SIPP been set up by then and those investments made, including dividends, until the date our service tells it Mr B has accepted my final decision. Aviva should allow for the set-up, dealing and ongoing charges involved with the SIPP. It should compare this notional fund value to the actual value of the £71,000 element of the PPP. If the notional value of the SIPP would have been higher Mr B has suffered a loss.

Aviva should allow for any additional sum paid in or out of the plan in the calculations.

If there is a loss as Mr B has taken his tax-free cash, it is appropriate for compensation to be paid to him as a lump sum rather than added to his plan.

As Mr B had remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to his income tax rate in retirement which Mr B has confirmed is 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this. As this is a notional reduction for tax purposes Mr B won't be able to reclaim anything from HMRC.

If the calculation shows a loss Aviva must add interest from the end date of the calculation to the date it makes settlement at 8% per year simple.

Income tax may be payable on any interest paid. If Aviva deducts income tax from the interest, it should tell Mr B how much has been taken off. Aviva should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Aviva must provide Mr B with a simple calculation of how it worked out the figures.

Aviva must pay Mr B £500 in total for the distress and inconvenience he has been caused.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Aviva Life & Pensions UK Limited.

I direct Aviva Life & Pensions UK Limited to undertake the calculations set out above and pay any compensation due.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 February 2025.

Nigel Bracken
Ombudsman