

The complaint

Mr G says Aviva Life & Pensions UK Limited (Aviva) was responsible for mishandling his request to surrender two of his personal pensions. He says this has resulted in him paying too much tax.

What happened

Mr G was a serving prisoner. He needed to pay the Crown Prosecution Service (CPS) a large proceeds of crime sum. He was informed if he hadn't settled the outstanding amount by the end of 2023 his sentence would be extended and interest of 8% would be added to the outstanding balance.

Mr G decided to surrender several personal pension policies putting the funds towards a wider plan of action to meet the payment required by CPS. Two of his pensions were with Aviva. The larger of these was worth around £77,000 and the smaller policy was valued at about £5,000.

As Mr G was in prison, communications with Aviva were difficult. Phone and email access were limited, so he had to rely on correspondence.

In cases like this it's helpful to establish a chronology of events. The following timeline is based on what I understand from the records and testimony of Mr G and Aviva.

13/10/23 – Mr G wrote to Aviva about his two personal pensions held with it. He briefly explained his situation. He asked for confirmation of the surrender value for his policies. And he enquired about the tax to be deducted. He said he had limited time to sort matters out, but didn't state by when this would be necessary to avoid any sanctions. He also informed Aviva about a change of address.

23/10/23 – Aviva received Mr G's request

30/10/23 – Aviva sent Mr G an options pack, but it was sent to the wrong address.

2/11/23 - Mr G sent a letter to Aviva chasing the valuation, forms and advice about the tax to be paid. He stated it was a matter of urgency.

7/11/23 – Aviva re-issued an options pack for his main pension, presumably following receipt of its returned correspondence from 30/10/23. Mr G acknowledges receipt of this letter around the same time. He said he waited for information about his second policy to understand his overall position.

10/11/23 – Aviva issued an options pack for Mr G's smaller pension. It seems this wasn't received by Mr G.

29/11/23 – Aviva sent a form to Mr G to complete in relation to his change of address details.

18/12/23 – Mr G completed the change of address form. He restated his intention to surrender the policies and asked for the forms he needed to complete. He also notified Aviva there was a possibility he would be moved again in the following few weeks. And he asked it to use his prisoner reference number to ensure that correspondence would find him in the system.

29/12/23 - Aviva received Mr G's change of address correspondence.

3/1/24 - Aviva re-issued an options pack for Mr G's smaller pension. In doing so, it failed to meet his request for it to use his prisoner reference on future correspondence. Infact it never used this on any of the letters it sent him. That said we know Mr G received this pack of information because he completed certain forms.

Mr G says by this time he'd found out that because he could show CPS he was trying to pay off the debt he owed it, for example he'd already transferred a significant sum to it from another pension he held with a different provider and was trying to access his Aviva funds, there was no longer a risk of his sentence being extended. He didn't share this development with Aviva.

Mr G also says around this time he'd also come to the realisation that it would make sense for him to take the benefits from his Aviva pensions on or after 6 April in the 2024/25 tax year, which he says would've reduced the tax payable on these funds. That's because he'd already received a significant payout from another pension provider which fell in the 2023/24 tax year.

19/1/24 – Aviva received completed options forms from Mr G for both his pensions. These indicated he wanted to take all his money in one go. And he'd provided details of the CPS account into which funds should be paid. On the face of both forms where he was completing the important details, it said completion would enable Aviva to provide him with a quote if taking the funds all in one go, and that it would send further details to help him decide if it was the right option for him.

Also on this date, having previously made contact with the courts to confirm Mr G's lump sum payments were to be paid into the CPS account, Aviva took a business decision to execute the transaction without requiring any further authority from him. It said it was clear this is what he'd wanted to happen and that the situation was urgent.

23/1/24 – Aviva sent Mr G a follow-up pack for his larger pension, this was usual practice. In theory this was to seek confirmation he wanted to proceed in taking the benefits from his plan. Unlike the options letter, this also identified how much tax it would be deducting from his pension funds. But the letter didn't reach Mr G, it was returned to sender and received by Aviva on 31/1/24. And in any event Aviva had already taken the decision to pay out his pension funds.

12/2/24 - Aviva sought confirmation from Mr G about his contact details.

28/2/24 – Aviva arranged payment of Mr G's pension funds to the CPS. This meant the transaction fell in the 2023/24 tax year. It sent him a letter of confirmation on 5/3/24, but again this was returned to sender.

Mr G raised a complaint with Aviva on 20/4/24 about what had happened. He says he only found out his funds had been paid over to the CPS following his family enquiring about the situation after the event. He highlighted two main concerns. Firstly he noted that even at the time of his writing he'd received no notification from Aviva that his funds had been paid over. And secondly he was unhappy that he hadn't been consulted about the timing of the payout.

Aviva responded to Mr G on 13/5/24. It acknowledged and apologised for some of the problems that he'd experienced with correspondence, in particular the delay of around a week in his receipt of his main pension options pack in October 2023. And in relation to certain letters issued after it had taken the decision to make the pension lump sum payments to the CPS from his pension funds. It also acknowledged a delay between that decision and making the payment. It offered him late payment interest and £300 in recognition of the trouble and upset it had caused.

Mr G wasn't satisfied. He didn't think Aviva had addressed the matter of his prisoner reference number and why this hadn't been used in correspondence. He also remained concerned that he'd not been given the opportunity to choose the timing of the payments of his pension funds and therefore manage his liabilities between tax years. He brought his complaint to this Service.

An Investigator considered Mr G's case. She noted that during its engagement with this Service Aviva had increased its offer for the trouble and upset it had caused, accepting it should've used the prisoner reference number he'd provided on its letters to him. In respect of the tax he'd incurred she concluded:

"...I believe it was reasonable for Aviva to reach the business decision they did. I say this because they were unaware your needs had changed. Aviva acted in good faith by skipping the second stage of their normal process in order to speed the process up for you to meet your urgent request. Their decision had no bearing on your options as you still required the policies to be paid out in full to the court. So, it wouldn't be fair for me to say, without the benefit of hindsight, that Aviva should have followed their standard process. As such, it wouldn't be reasonable for me to ask Aviva to reimburse the tax you've incurred."

As both parties couldn't agree with the Investigator's view, Mr G's complaint was passed to me to review afresh. I issued my provisional decision in February. As neither party has provided any new evidence or arguments for me to consider I see no reason to depart from my initial findings and conclusions.

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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr G's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around the services like those performed by Aviva for Mr G. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.

- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr G's complaint.

Obviously the circumstances in which Mr G found himself were complicated. This was particularly the case in terms of his ability to communicate with third parties like Aviva. Corresponding was his only realistic method of carrying out the transaction in respect of his pensions.

My understanding is that prisoner correspondence is subject to check-in and check-out procedures. All incoming and outgoing letters are monitored and censored by prison staff to ensure they don't contain any prohibited items or information that could compromise security. This means it can take several additional days for delivery and receipt than would be the case for the general public.

When I consider the timeline of events, I think it is this factor which contributed most to Mr G's experience of how long his dealings with Aviva were taking, up until it authorised his pension payment on 19 January 2024. The only significant issue between October 2023 and this point was caused by Aviva using an incorrect address and this only appears to have delayed matters by around a week.

As we know there were later issues concerning what appears to have been a nugatory communication from Aviva about Mr G's main pension, but this was after the decision it had already taken to pay out his funds. And there was a problem around notifying him that his funds had been paid out.

Aviva has now acknowledged responsibility for these issues in full, it has apologised and offered Mr G a payment for the distress and inconvenience it caused.

I find that because of Mr G's situation, it was more likely than not he wouldn't have been able to settle his affairs in relation to his Aviva pensions prior to establishing that he wouldn't face the sanction of an extended sentence.

I think the substantive matter in this case relates to the timing of the payment of Mr G's pension funds by Aviva to the CPS.

Firstly, I think it is important to stress that in deciding to pay Mr G's lump sum pension funds over to the CPS on his behalf Aviva acted in good faith, and with the right motivation. It was told by Mr G the matter was urgent and that if it wasn't resolved quickly he faced an extended sentence. An impact on his liberty. A very serious consideration.

A problem for Mr G is he never informed Aviva that in January 2024 he knew the ultimatum he'd faced regarding payment of his proceeds of crime penalty had fallen away. That was because he'd showed willing to the authorities that he was trying to settle his debt. Even though he'd incur some additional interest costs, there was no longer a threat of more time in prison.

But I think the weaknesses in Aviva's approach in this case are even more significant. Aviva sent Mr G options packs for his pensions. He completed the necessary forms and sent them back in early January 2024. On the face of both the forms it said:

"What is this form for...Fill in this form if you would like a quote to take all the money from your plan in one go.."

"What's next...We'll send you all the details to help you decide if this is the right option for you..."

As we've established, Mr G was reliant on correspondence. And even though I think he should've let Aviva know his circumstances had changed, I also think he was entitled to rely on the information it had sent him. He thought he would receive another pack before completing the transaction. I don't think that was unreasonable.

The Investigator asked Aviva why it had taken the decision to make payments from Mr G's pension even though it hadn't followed its usual two-step process. It said:

"We had established that the funds were being paid to a prison account, and we wanted to get the payment done as soon as possible. As this was a unique case, a business decision was taken."

But Aviva didn't have all the information it needed to make such a decision.

I can't see Mr G ever defined what urgent payment of his pension funds meant. Was it within a month, 3 months or 6 months? Aviva didn't know or seek to establish what timetable he was working to. Had it done so it would've understood he'd originally thought he'd need to pay the money over to the CPS by December 2023. By the time it had got around to making a business decision to expedite payment, the main driver for this was no longer relevant.

By the time Aviva had got around to dealing with Mr G's urgent request it was January 2024. No reasonable interpretation of urgency can be applied to its action given his request was made in October 2023.

I note Aviva reached out to the CPS at some point to confirm Mr G's situation. It hasn't shared any record of the conversation, for example whether it explored what sanctions might be applied to him and the relevant timetable. But it certainly represented an opportunity for discovery.

Further, although Aviva wasn't responsible for providing Mr G with advice, it would've been aware of his situation and the proximity of the new tax-year. By going outside of its usual procedure, a procedure that Mr G was informed in correspondence it would follow, it failed to conduct sufficient due diligence.

On balance, I've decided that Aviva should've sent Mr G a second pack of information and forms to complete in relation to his pensions. That was its usual process. And that is what Mr G was expecting.

Putting things right

I'm upholding Mr G's complaint, so he needs to be returned to the position he'd have been in now, or as close to that as reasonably possible, had it not been for Aviva Life & Pensions UK Limited's failings.

Had Mr G received a second pack of information and forms to complete from Aviva Life & Pensions UK Limited he would've been aware at that time the threat of an extended prison

sentence related to the debt he had to pay to the CPS had fallen away. And I think he believed taking his benefits a few weeks later in the new tax-year would've reduced his liability and so that is what he would've done.

So, I require Aviva Life & Pensions UK Limited to conduct a loss assessment along the following lines:

- a. It should assume he would've crystallised his two pensions at the earliest possible date in the 2024/25 tax year. From the figure derived it should deduct what Mr G actually received following crystallisation of his funds on 19 January 2024 (including any late payment interest etc.). A loss or gain figure will be arrived at.
- b. It should then work out the notional tax he should've paid on his two pension lump sums had they been made in 2024/25. It will need to liaise with Mr G to understand his wider tax position for this year to arrive at the notional sum. It should deduct from that figure derived the actual tax he paid (after any adjustment by HM Revenue & Customs). A loss or gain figure will be derived.
- c. If it chooses, it can require Mr G to share information with it about how the two pension lump sum payments made in January 2024 were used to pay down his outstanding CPS debt. It can assess the notional savings he's made on interest by paying it earlier than had his pension funds been paid in the 2024/25 tax year.
- d. It should add any over or underpayment of pension from a. to any over or underpayment of tax at b, together with any adjustment at c, to arrive at an overall assessment. If that sum is in Mr G's favour it should make arrangements to pay that sum within 90 days of him accepting any final decision. I'm allowing 90 days because the matters here stray into the current tax year which are yet to be finalised. After that time any amount owed will begin to attract simple interest at 8% simple per annum.

Trouble and upset

When I'm considering a complaint like Mr G's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Aviva Life & Pensions UK Limited has accepted various failings in its handling of Mr G's pension affairs. In total it has offered him £600 to put matters right. I think this is a fair award in respect of his case and I will require it to honour any element of that sum that it has yet to pay him.

My final decision

For the reasons I've set out, I'm upholding Mr G's complaint and I require Aviva Life & Pensions UK Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 April 2025.

Kevin Williamson

Ombudsman