DRN-5800106

The complaint

Mr M is unhappy with the way in which Aviva Life and Pensions UK Limited (Aviva) has handled his serious ill-health pension claim.

What happened

The history leading up to this complaint is well known to the parties and therefore I have only summarised events below.

Mr M is currently 40 years old and in May 2023 was diagnosed with a serious medical condition. According to Mr M's Nurse Specialist his condition "is a progressive neurological and terminal diagnosis." And sadly, Mr M's "condition will not improve, and his condition will continue to deteriorate; there is no curative treatment available."

Mr M holds a group personal pension plan (GPP) with Aviva. In 2024 he took a partial withdrawal from his pension as an ill-health claim and received a tax-free lump sum on 25 June 2024.

Later in 2024 Mr M contacted Aviva as he wished to claim the remainder of his pension as a serious ill-health lump sum. Aviva initially proceeded with the claim but ultimately determined that Mr M was not eligible to claim his pension under serious ill-health stating he had taken a withdrawal under ill-health earlier in 2024. It also transpired that Aviva may have erred in approving the ill-health claim.

Mr M subsequently complained to Aviva about the denial of his serious ill-health claim. Aviva acknowledged that it hadn't told Mr M at the time of his original ill-health claim that he could've made a serious ill-health claim instead. It said that if Mr M could provide evidence that he had been given a life expectancy of less than 12 months, in line with the guidelines for serious ill-health claims, at the point prior to his 2024 withdrawal, Aviva would "take liability for this and pay the remaining funds as tax free, effectively allowing Mr [M] to withdraw under Serious Ill Health." Aviva also paid Mr M £200 for the trouble and upset caused to Mr M when Aviva misinformed him that he would be able to claim the pension under serious ill-health.

Mr M provided Aviva with information from his medical practitioner which explained that his life expectancy could be less than 12 months. Aviva concluded that this was not sufficient to confirm that Mr M was expected to live for one year or less and so under relevant pension tax legislation, he was not eligible to take his pension under serious ill-health when he made his initial withdrawal.

Unhappy with this response, Mr M brought his complaint to this service for an independent assessment. One of our investigators looked into things and concluded that Aviva had erred in denying Mr M's serious ill-health claim based on the information provided in June 2024. To put this right, he thought Aviva should reconsider its decision on Mr M's serious ill-health claim using the current date and if necessary, new medical evidence based on Mr M's present condition.

The investigator also acknowledged that Mr M received funds sooner than he should have in June 2024, so he didn't think Aviva needed to provide further direct compensation, like interest or calculate any potential investment loss. But he thought the compensation for the distress and inconvenience caused to Mr M should be increased to £350 given the repeated errors made during the difficult circumstances faced by Mr M.

Following this Aviva contacted Mr M stating that its technical team had re-examined its original decision regarding his request to withdraw the remaining pension funds under the serious ill-health provisions. It explained:

> *The team has reviewed the case again and confirmed that they are unable to change their original decision in relation to any crystallised funds. Therefore, their position to decline the request for those funds remains unchanged.*
>
> *However, they have advised that if you are able to provide evidence from a registered medical practitioner confirming that your life expectancy is less than 12 months, you would be eligible to withdraw your uncrystallised funds under the serious ill health process.*

Mr M subsequently provided a letter from his Specialist Nurse stating in relevant part:

> *due to the progressive and unpredictable nature of the disease, it could be likely that prognosis is less than twelve months. This prognosis dates back to his initial withdrawal of funds from Aviva in June 2024. His condition will not improve, and his condition will continue to deteriorate; there is no curative treatment available.*

Aviva reviewed the new information and responded that

> *as there is no definitive life expectancy of less than 12 months given, we are still unable to consider Mr [M's] claim of Serious Ill Health. Whilst we are wanting to do our best to support Mr [M], we cannot bypass the regulations set.*

As Mr M remained dissatisfied, the complaint has been referred 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, I will be upholding Mr M's complaint in part.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the industry regulator, the Financial Conduct Authority (FCA). Instead, this service looks to resolve individual complaints between a consumer and a business.

In order to uphold a complaint, I would need to find that something has gone wrong and that a consumer has lost out as a result. I would then ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

The crux of the current complaint is whether Aviva has acted unreasonably or unfairly in denying Mr M's serious ill-health pension claim.

HMRC established requirements for pensions. Under HMRC rules, the Normal Pension age is currently 55 (but due to increase to 57 in April 2028). Pension scheme rules generally prevent a payment to members before this age. However, individuals who are in 'ill health' may take benefits before the normal minimum pension age if certain conditions are satisfied.

There are two grounds, ill-health and serious ill-health.

To satisfy the ill-health condition requires evidence that the member is and will continue to be, medically incapable (either physically or mentally) of continuing their occupation as a result of injury, sickness, disease or disability and the member ceases to carry on that occupation. The evidence must be provided by a registered medical practitioner. However scheme rules may impose stricter requirements and may not offer this option at all.

HMRC explains that if a member is suffering with serious ill-health, the pension scheme administrator may commute any pension entitlement and pay this as a lump sum (known as a serious ill-health lump sum). But certain conditions must first be met. These are:

- The scheme administrator has received written evidence from a registered medical practitioner confirming that the member is expected to live for less than one year.
- The member has not used up all their lifetime allowance.
- The payment must extinguish all uncrystallised rights under the arrangement.

I don't deny the severity of Mr M's medical condition, nor is it disputed that the condition is terminal. Unfortunately, HMRC rules are very specific and require confirmation of life expectancy of less than on year. To date, this evidence has not been provided to Aviva and there are simply no exceptions in the tax law that would permit Aviva to approve a serious ill-health claim without this. Were the claim to be approved in these circumstances it would be considered an unauthorised payment under HMRC rules and Aviva and Mr M could be subject to high penalty charges as a result. Therefore, I am unable to conclude that Aviva has acted unfairly or unreasonably in denying Mr M's claim in these circumstances.

Turning to Aviva's error in authorising the ill-health claim. Mr M is not complaining about receiving benefits under this claim. As it relates to this complaint, Mr M is unhappy because he believes that this has prevented him from claiming successfully under serious-ill health. However, that is not the case. If Mr M had provided the requisite medical evidence and the sole reason for denying any payment was because he had no or limited uncrystallised pension rights remaining, then I would need to consider the impact of Aviva's payment of the ill-health benefits in 2024 on his current complaint. However, that is not the circumstances I am presented with here. To date, Mr M has not provided the medical evidence required by HMRC for a serious ill-health claim.

And although Aviva has said the ill-health claim should not have been paid, Mr M has not raised a complaint about this specifically, so I'm unable to reach a conclusion as to whether Aviva is correct here. Regardless, I've not been provided with any evidence that Aviva has sought to reclaim the funds from Mr M, nor have I seen evidence that Mr M has been required to bear the tax consequences of any unauthorised payment. Therefore, under the present circumstances of this complaint, I can't see that Mr M has lost out as a result of Aviva approving his ill-health claim, so I won't be asking it to do anything more.

Furthermore, although Mr M has told this service he believes he has lost out on investment returns because of the erroneous ill-health claim payment, I've not seen any evidence to suggest he has raised a complaint about this with Aviva. Nor, as I've explained, have I been

provided with evidence that this error has prevented Mr M from making a successful claim for serious ill-health or has otherwise suffered financial or nonfinancial harm as a result. So I don't consider it necessary or reasonable for me to comment on the ill-health claim further.

For the trouble and upset caused to Mr M because of its mistakes, Aviva offered him £200. Our investigator didn't think this was sufficient and considered that Aviva should pay Mr M an additional £150. I've thought about this and agree with the investigator that given that multiple mistakes were made during a difficult time for Mr M, more compensation is warranted.

As an informal dispute resolution service, our approach to such compensation is that it should be modest and it is not meant to be a punishment for a business's mistakes. In the current circumstances, the impact of Aviva's mistakes has caused considerable distress lasting for a significant time. Therefore, I uphold Mr M's complaint regarding these mistakes and consider it fair that Aviva should pay Mr M £350 total (a further £150 in addition to the £200 already offered).

I'm sorry to hear of everything Mr M is going through and I appreciate how difficult things must be for him. But as I've explained, I don't think Aviva has treated him unfairly or unreasonably in denying his serious ill-health claim, given it hadn't received the evidence of life of expectancy of one year or less as required by HMRC. So, whilst I know Mr M will be disappointed with this outcome, I'm not upholding this part of his complaint.

My final decision

For the reasons I've explained above, I uphold Mr M's complaint in part and direct Aviva Life & Pensions UK Limited to pay Mr M a total of £350, including the £200 already offered, if not yet paid, for the trouble and upset its actions caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 October 2025.

Jennifer Wood
Ombudsman