

The complaint

Mr K complains that Aviva Life & Pensions UK Limited ('Aviva') failed to follow his instruction to stagger the transfer of shares from his Save As You Earn ('SAYE') scheme into an investment ISA over two tax years.

What happened

In March 2024, Mr K applied to move the shares from his employee SAYE account into an ISA with Aviva. As the balance within Mr K's SAYE exceeded the annual ISA allowance, Mr K wanted to fully utilise the £20,000 ISA headroom for the 2023/2024 tax year and use any remaining shares towards his 2024/2025 tax year ISA allowance.

Aviva transferred £20,000 of Mr K's shares into an ISA in the 2023/2024 tax year and placed the balance of the shares into a general investment account (GIA). After learning that the shares which had been placed into the GIA couldn't be swept into the 2024/2025 ISA without having to be sold, Mr K decided to formally complain to Aviva. In summary, he said that Aviva had failed to follow his instructions and that he was not properly informed of the process. He went on to say that he's unhappy that his shares within the GIA will now be subject to capital gains tax (CGT) when he comes to sell them.

After reviewing Mr K's complaint, Aviva concluded they were satisfied they'd done nothing wrong. They also said, in summary, that the application forms Mr K had completed were clear about what would happen to any monies in excess of the current year's ISA allowance. They also went on to say that had he been unsure of the process, their customer help team would've been able to provide any information to support him.

Mr K was unhappy with Aviva's response, so he referred his complaint to this service. The complaint was then considered by one of our Investigators. He concluded that Aviva hadn't treated Mr K unfairly because from he'd seen of the paperwork that Mr K had completed, Aviva didn't act unreasonably in placing the balance of the monies over the 2023/2024 ISA allowance into the GIA.

Mr K, however, disagreed with our Investigator's findings. In summary, he said:

- There were no warning signs telling him not to transfer any shares for the 2024/2025 tax year, even though Aviva had asked what he was transferring.
- When Aviva told him that he'd get a new SAYE transfer pack from themselves rather than the SAYE provider, he thought this was perfectly reasonable. He saw nothing to believe that Aviva wouldn't be able to do a transfer from the GIA to the ISA (without having to sell the shares first) as long as he stayed within the 90-day HMRC limit.
- At the point of application, Aviva failed to explain that it is normal for investment ISA providers to offer a GIA as share prices can increase above the ISA limit.

- Aviva had an opportunity to query his instructions in their email to him of 8 March 2024, but they failed to do so.
- Given that he'd noted he wished to transfer shares valued at c£37,000 on the 2023/2024 tax year, this should've put Aviva on notice that he wished to utilise two years' ISA allowances.

Our Investigator was not persuaded to change his view as he didn't believe Mr K had presented any new arguments he'd not already considered or responded to. Unhappy with that outcome, Mr K then asked the Investigator to pass the case to an Ombudsman for a decision.

After carefully considering matters, I decided to issue a provisional decision on this case as explained that I was minded to reach a different outcome to that of our Investigator and uphold the consumer's complaint. The window aimed to give both parties the opportunity to consider what I had to say and provide any additional comments before I reached my final decision.

What I said in my provisional decision:

I have summarised this complaint in less detail than Mr K has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts.

My role is to consider the evidence presented by Mr K and Aviva in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm planning on upholding Mr K's complaint - I'll explain why below.

I'm not planning on setting out a timeline on this complaint as I'm satisfied it's well known to both parties and in any event, our Investigator provided a detailed summary in his view that was issued in March 2025. The crux of Mr K's complaint is that he's of the opinion he set out to Aviva what he wanted to happen with his SAYE shares when he submitted the application form to them, before the end of the tax year. For me to be able to uphold a complaint and instruct Aviva to take corrective action, I have to be satisfied that Mr K's wishes on the matter were clear and could reasonably be understood - and from what I've seen, that threshold has been met.

I've looked closely at Aviva's 'SAYE Share Transfer Form 2023/2024 Tax Year' form that Mr K completed on 5 March 2024. The application form confirmed that Mr K had exercised his share save options that same day and those shares were sat in the nominee account on Shareworks. I've set out the sections of the form that in my opinion are the most relevant to Mr K's complaint:

"Section 3a: Contribution Details for Aviva S&S ISA

Remaining ISA allowance for the 2023/2024 tax year: £20,000

Number of shares to be transferred to Aviva S&S ISA for the 2023/2024 tax year (see below if you also wish to transfer shares in the 2024/2025 tax year): 4434

At this point, it seems clear to me that that Mr K has only instructed Aviva to move 4,434 SAYE shares to them. There's no further commentary or option boxes that he's selected within this section of the form that directs them to move any other shares to them for investment within a GIA. The form then goes on address the next tax year:

"Please choose a tick box below:

Tick this box and input number of shares if you want to transfer a specific number of shares to your Aviva S&S ISA for the 2024/2025 Tax Year. By ticking this box you are letting us know to send out a 2024/2025 Tax Year SAYE Pack in the new tax year so your second transfer can be facilitated.

- I wish to transfer 3747 shares in the 2024/2025 tax year.*
- I do not wish to also transfer shares in the 2024/2025 tax year"*

Mr K ticked the box for the first option and inserted the number of shares he wanted to transfer in the new tax year (3747). And it's at this point that I think Aviva's form becomes cloudy. In my opinion, it goes beyond simply asking the customer whether they want a SAYE application posting out in the new tax year (which I believe is what Aviva are suggesting it's designed to do) but asks the consumer for a precise number of shares that they want Aviva to transfer into their ISA for the 2024/2025 tax year for them. So, I can see why a consumer may well think that by selecting this option and adding a number of shares, that Aviva will take care of their 2024/2025 tax year contribution – which they won't until further paperwork is completed.

The form then went on to ask:

"Approximate current market value of the shares to be transferred: £36,900*

**This cannot exceed your remaining 2023/2024 tax year ISA Allowance for the current tax year. If the value does exceed your remaining ISA Allowance and wish to continue with the transfer, please complete Section 3a and 3b."*

I can see why Mr K inserted £36,900 into this box - the closing Aviva share price on 5 March 2024 was 451.20 (source: Yahoo Finance). That meant, the 4,434 and 3,747 shares that he wanted to ISA across both tax years equated to that total. And, whilst the asterisk section which then follows notes that the amount being moved can't exceed the 2023/2024 tax year allowance, it then confirms that if it does, a further section on the form needs to be completed. Importantly, the form at that point doesn't explain to the consumer that any balance over the £20,000 won't be ISA'd in line with the previous instruction/box above.

Given the total number of shares that Mr K wished to transfer out of his SAYE and into the ISA (across two tax years) matched the £36,900 total, I think Aviva missed an opportunity to join the dots here and put the brakes on his transfer. I also say that because Mr K sent an accompanying email to Aviva with his application on 5 March 2024 that in my opinion, quite clearly signposted what he wanted to achieve. At 17:57, Mr K wrote:

"For the section where it asks for number of shares per tax year I assume this is fine as no doubt it will depend on the share price at the point the transactions are done. I do intend to use my allowance this tax year and next tax year as per the form so is this something you do automatically in the new tax year?"

I'm of the view Mr K was unambiguous in what he was looking to achieve at this point, yet Aviva's customer service representative failed to explain to him that the manner in which he'd completed the application form wouldn't achieve his objective. A representative at Aviva wrote to Mr K the following day saying that "*A separate declaration and illustration will be sent in the new tax year if you have chosen to contribute your SAYE shares in both the 2023/2024 and 2024/2025 tax years*". In addition, the same colleague also stated that they would reach out to him when the process opened in the new tax year. So, I think at that point, Mr K didn't have any cause for concern. Aviva's form then went on to state:

"If the number of shares you are requesting to transfer is currently valued at of over 90% of your remaining 2023/2024 tax year allowance, please complete section 4.

Section 3b: S&S ISA Declaration

I declare that:

I agree that it is my responsibility to ensure the number of shares I am requesting to transfer to my Aviva S&S ISA do not exceed my remaining 2023/2024 tax year allowance and;

I authorise Aviva to apply any shares which exceed my remaining 2023/2024 tax year ISA allowance on the date of share application, to my Aviva Investment Account."

But, given Mr K had already set out that he only wanted to transfer 4,434 shares for the 2023/2024 tax year, that wouldn't have exceeded his annual ISA allowance had Aviva followed his instruction as he'd set out. I accept that it's entirely possible there would've been an amount which would've been swept up into the GIA and covered by the second point above and the Section 4 declaration below, but Mr K didn't state that he wanted to add any shares or monies into the GIA in the 2023/2024 tax year.

"Section 4: Investment Account Declaration (if shares are currently valued at or over 90% of your remaining 2023/2024 tax year ISA allowance)

I declare that:

I authorise Aviva to apply any shares which exceed my remaining 2023/2024 tax year ISA allowance on the date of share application, to my Aviva Investment Account."

On 8 March 2024, Aviva wrote to Mr K explaining that his SAYE transfer to his S&S ISA was due to settle on 12 March 2025. The Aviva operative explained in the email that they could see he'd sent 8175 shares and any balance over the remaining ISA allowance would be sent to his investment account. Mr K was asked if he was happy for them to do this but if not, they'd reject the transfer, and it would have to be re-requested using a lower number of shares.

In response, Mr K explained that's what he thought was happening "*as per the application form then there will be a second transfer to the ISA in the new tax year from the investment account*". I think Aviva missed another opportunity at this point to again put the breaks on the transfer given Mr K's response. I say that because at this point, it's very clear to me that he was intending on moving the balance of shares over those used to fill the 2023/2024 allowance into the ISA in the 2024/2025 tax year. And, whilst I appreciate that Aviva aren't authorised to provide advice on the matter, knowing full well that Mr K was planning on moving any balance of shares that had been placed into the GIA from the SAYE in the new tax year, should've put Aviva on a path of discovery that the course Mr K thought he was going down was not part of the SAYE process and was incorrect.

For completeness, I've also looked at Aviva's wider paperwork and given careful thought to whether their literature was sufficiently clear enough to allow Mr K to make the correct informed choice about what he wanted to achieve. I think it's also important to position here that Aviva weren't just dealing with a consumer with no financial services experience; Mr K works for Aviva and it appears that he's employed there in a reasonably senior, technical position. Yet despite this, he wasn't able to navigate the application paperwork to arrive at a good outcome.

Mr K states that Aviva have only recently introduced the process of ISA'ing SAYE maturities over a two-tax year window and he was part of a pilot program to allow Aviva to fine tune their approach. But, from what I've seen of Aviva's paperwork on the matter, it doesn't explain how staff members who hold shares in excess of the ISA allowance should complete the paperwork to allow them to stagger the ISA contributions across the 2023/2024 and 2024/2025 tax years, so I can't conclude that Mr K failed to act reasonably in the matter by not reading and following the literature.

I've listened to the telephone call that one of Aviva's complaint handlers made to Mr K on 9 August 2024. During that discussion, they explained that in light of his concerns, they were going to re-open the complaint and then try and reach a resolution that he would be happy with. Aviva went on to say that they were going to try and get his shares into the ISA and failing that, they were going to try and compensate him for the tax that may come from doing a bed and ISA. Mr K states that following that call, he then heard nothing further about the commitments that had been made. As part of my consideration into the complaint, I asked Aviva if they'd changed their position on the matter; despite Aviva explaining that there was no further evidence to suggest that they were in the wrong, they didn't provide a clear explanation why they'd made the call to Mr K and led him to believe that they'd try and remedy the issue for him. I can well imagine the consumer's disappointment when nothing materialised after that discussion and he then found himself having to complain to this service.

It seems to me that Aviva's whole staggered year SAYE ISA process has fallen down off the back of one box – the £36,900 figure that Mr K added to page three of his application form. But, as I've already explained, I don't think Aviva's form or their supporting instructions were particularly clear and I think they missed opportunities to clarify Mr K's wishes and put the brakes on the transfer, particularly when in my opinion, he'd clearly set out his wishes to Aviva in the initial email that he'd sent to them. It's for the reasons that I've described above that I'm minded to uphold Mr K's complaint and as such, I require Aviva to put things right for him in the following way:

Putting things right

If everything had gone as Mr K had intended, all of his SAYE shares would've been transferred into the ISA over two tax years meaning his total investment would now be invested in a tax efficient manner.

Using financial services won't always be hassle free and sometimes mistakes occur. When they do, we'd typically expect the business as far as is reasonably possible, to put the consumer back into the same position that they would've been in were it not for the error. I'm satisfied that the steps that I've set out below will do that, allowing for the fact that we're now working to a new timeline. The redress approach allows both parties to draw a line in the sand and creates a clean break on the issue.

A. 2024/2025 ISA allowance

Had Aviva followed Mr K's instructions, the balance of his shares over his 2023/2024 ISA allowance would've been held over and credited to his investment ISA in the 2024/2025 tax year. There are two ways that Aviva can remedy the missed ISA allowance. Aviva must first attempt Approach 1 and if that is not possible, I require them to move to Approach 2:

Approach 1:

In the first instance, Aviva should present my decision to HM Revenue and Customs to establish whether in light of the findings, they are prepared to authorise Aviva to backdate Mr K's SAYE ISA transfer contribution to the 2024/2025 tax year. If HMRC approve the request, Aviva should make the necessary arrangements to move 3884 of Mr K's shares into the ISA wrapper (the 3884 is the number of shares that were invested in the GIA after the 2023/2024 ISA threshold of 4291 shares had been used). I'm of the opinion that this is the simplest and most straightforward approach to take that will place Mr K back into the correct position.

Approach 2:

Aviva must follow this redress approach if HMRC will not approve Approach 1.

1. Aviva must transfer the 3884 shares from Mr K's GIA into his ISA wrapper.
2. Given the current Aviva share price, the transfer will have to take place over two tax years.
3. Aviva must reimburse to Mr K, any capital gains tax that becomes due as a consequence of the transfer (both in this tax year and the next).
4. Aviva must cover the cost of any associated dealing fees in undertaking the two transactions.
5. Mr K must provide evidence to Aviva in a timely manner of any CGT liability that he incurs.

Mr K states that he has not used his ISA allowance, so I'm satisfied that both approaches are suitable.

B. Dividend reinvestment

Mr K states that his Aviva shares that were held within the GIA and ISA have yielded a number of dividends since they came out of the SAYE. He then used those dividends to reinvest in new Aviva shares. Aviva must:

1. Establish the number of shares that those dividends went on to purchase from 6 April 2024 to 5 April 2025.
2. Calculate how many of those shares Mr K would have had enough ISA headroom in the 2024/2025 tax year to place within that wrapper.
3. Present their calculations to HMRC when establishing whether they'll permit Approach 1 (in section A) above. Those shares should form part of the stocks moved into the ISA wrapper.
4. If HMRC won't permit Approach 1 (in section A) above, Aviva should arrange for the number of shares in B2 to be sold and placed in his ISA.
5. In following step B4, Aviva must also adhere to the direction given in steps A2-A5 above.

C. Dividend tax

Mr K has received dividends from his Aviva shares that have been sat in his GIA. Those dividends have been subject to higher rate tax (as they weren't sat within the ISA).

1. Aviva must refund the income tax that Mr K paid on his dividends as a consequence of them being within the GIA.
2. Aviva should use the number of shares that was calculated in step B2 (above) under this requirement.
3. Aviva should add 8% p.a. simple interest on the tax paid on each of the dividend payments. The calculation should run from the date the tax was paid to the date that Mr K accepts my final decision.
4. Aviva can deduct income tax from the interest payment if required to do so by HMRC.
5. Mr K should provide evidence of the dividends received and subsequent tax that followed to Aviva to allow them to complete the calculation above.

D. Distress and inconvenience

In light of the trouble and inconvenience that Aviva have caused to Mr K, Aviva should pay him £350. I've determined that amount is appropriate because Aviva initially rejected his complaint, they then telephoned him to explain that they wanted to resolve the matter for him and then failed to follow up on their commitments made within that call. I'm therefore of the opinion that Mr K has suffered a loss of expectations and should be compensated.

I'm satisfied that the above steps are fair and reasonable in the circumstances.

Responses to my provisional decision:

After reviewing what I had to say, Aviva explained that they would contact HMRC to establish whether they would approve 'Approach 1' that I had set out above.

After hearing back sometime later, Aviva contacted this service to explain that HMRC were unable to permit the backdating of the ISA.

In response to the provisional decision, Mr K explained that he was concerned about the impact of future SAYE schemes on his ISA allowance. In addition, he also said:

- He had missed an investment opportunity for an additional year as Approach 1 was not allowed by HMRC. This has meant that although he has funds to invest in the current tax year, he has not done anything with these as it would impact the resolution of this complaint. He feels that he has been impacted here due to Aviva's delays in resolving this and that he has no option but to accept this impact.
- This issue will take a long time to resolve. For the investment moving to the ISA, the existing amounts in the GIA will take place over tax years 2025/2026 and 2026/2027. Based on the current share price (£6.84) as a guide, this will utilise the full allowance for 2025/2026 and c£10,000 of the 2026/2027 allowance.
- His forthcoming SAYE scheme matures in 2026/2027. His plan was to invest this in the ISA over two tax years, utilising his allowance. His share option is purchasing 6,224 shares, which has a value of c£42,600. Therefore, he feels that he should have been

able to use the full allowance over two tax years. Using recent figures as assumptions, this will mean transferring shares into the ISA in 2026/2027, 2027/2028 and 2028/2029. He will therefore potentially lose part of his 2028/2029 allowance due to the length of time Aviva will take to resolve this.

- A similar pattern will follow with dividends.
- He wants to retain his Aviva shares (rather than selling them) and move them into the ISA tax wrapper.

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.

I want to acknowledge Mr K's frustration and concerns about the length of time it will take to resolve this matter. Unfortunately, as HMRC won't permit the backdating of the ISA, and as Mr K doesn't wish to sell his SAYE shares but retain them and hold them within his ISA, the only feasible option to achieve that is to stagger the sale and re-purchase of those shares into the ISA over a number of tax years.

I also want to acknowledge again that whilst this service aims to ask the business to put the consumer back into the same position that they would've been in were it not for the mistake, sometimes it's not always possible to mirror that precisely because of the constraints of the annual ISA headroom, the variability of the Aviva share price, subsequent SAYE maturities and of course the dividends that follow. But, I'm satisfied that what I've set out will place Mr K as closely as is reasonably possible to the position that he would've been in.

I also appreciate what Mr K has said that he has funds to invest in the current tax year and he has not done anything with these as it would impact the resolution of this complaint. He felt that he had been impacted here due to Aviva's delays in resolving this and feels that he has no option but to accept this impact. Unfortunately, matters such as these do typically take some time to work through and resolve. However, Mr K has been free to consider investing his other monies outside of this issue. He wouldn't have been in a position to ISA those other investments as it was always his intention to use his allowance for the Aviva shares, so whilst I can ordinarily consider the wider impact a firm's actions have had on a consumer, I'm satisfied that any missed investment opportunities outside of the Aviva shares isn't something that I need to look at here. I say that because compensable loss must be foreseeably caused by the firm's failings in this product/process, not by the consumer's choice to defer other investments pending the outcome of their complaint.

As I've not been presented with any new information that's made me change my mind, it therefore follows that I'm upholding Mr K's complaint for the reasons that I set out above.

In light of the various email exchanges that followed my provisional decision, I issued a revised version of the redress below to both parties with a number of small amendments. For completeness, I have provided a copy of it below:

Putting things right

As HMRC won't permit 'Approach 1', Aviva must adopt the following approach in putting things right for Mr K:

Section A: GIA to ISA transfers

1. Aviva must transfer the 3884 shares from Mr K's GIA into his ISA wrapper.
2. Given the current Aviva share price, the transfer will have to take place over two tax years.
3. Aviva must reimburse to Mr K, any capital gains tax that becomes due as a consequence of the transfer (both in this tax year and the next).
4. Aviva must cover the cost of any associated dealing fees in undertaking the two transactions.
5. Mr K must provide evidence to Aviva in a timely manner of any CGT liability that he incurs.

Mr K states that he has not used his ISA allowance, so I'm satisfied that both approaches are suitable.

Section B. Dividend reinvestment

Mr K states that dividends from his Aviva shares (held in the GIA and ISA) were reinvested into new Aviva shares. Aviva must:

1. Identify the number of shares purchased from reinvested dividends between 6 April 2024 and 5 April 2025 in the GIA.
2. Determine how many of those shares would have been held inside the ISA had the original transfer been completed correctly (*reinvested dividends within an ISA do not use subscription allowance, so this step is about restoring tax efficiency rather than adjusting allowance*).
3. Arrange for those shares currently outside the ISA to be sold and placed into the ISA wrapper.
4. Apply the same CGT and dealing fee protections as in the main transfer steps.
5. Aviva should then repeat the exercise for the 2025 / 2026 tax year GIA dividends.

Section C: Dividend tax

Mr K has received dividends from his Aviva shares that have been sat in his GIA. Those dividends have been subject to higher rate tax (as they weren't sat within the ISA).

1. Aviva must refund the income tax that Mr K paid on his dividends as a consequence of them being within the GIA.
2. Aviva should use the number of shares that was calculated in step B2 (above) under this requirement.
3. Aviva should add 8% p.a. simple interest on the tax paid on each of the dividend payments. The calculation should run from the date the tax was paid to the date that Mr K accepts my final decision.
4. Aviva can deduct income tax from the interest payment if required to do so by HMRC.

5. Mr K should provide evidence of the dividends received and subsequent tax that followed to Aviva to allow them to complete the calculation above.

Section D: Distress and inconvenience

In light of the trouble and inconvenience that Aviva have caused to Mr K, Aviva should pay him £350. I've determined that amount is appropriate because Aviva initially rejected his complaint, they then telephoned him to explain that they wanted to resolve the matter for him and then failed to follow up on their commitments made within that call. I'm therefore of the opinion that Mr K has suffered a loss of expectations and should be compensated.

Section E: Future SAYE maturity (December 2026)

Mr K states he has a further SAYE scheme maturing in December 2026. Were it not for Aviva's error, Mr K would've been able to ISA a large part of those funds but now it's likely some or all of his 2026/27 ISA allowance may have been used. Therefore, Aviva must also:

- Take into account that Mr K's 2026/2027 ISA allowance will be partially or fully used by the transfer of shares from his GIA under this redress.

Aviva must follow the same principles / approach for the December 2026 SAYE maturity as laid out within the sections above (so, section A through to section C) until all of the December 2026 SAYE shares and dividends that followed from them, are held within his ISA.

I'm satisfied that the above approach is fair and reasonable in all of the circumstances.

My final decision

I'm upholding Mr K's complaint and I require Aviva Life & Pensions UK Limited to take the actions above to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 February 2026.

Simon Fox
Ombudsman