

complaint

Mr D complains about Aviva Life & Pensions UK Limited (Aviva). He doesn't think Aviva have compensated him sufficiently following errors it made regarding his Aviva Platform account.

background

Mr D's father very sadly passed away on 30 September 2018.

On 29 October 2018 Aviva wrote to Mr D. In summary it said:

- it had incorrectly calculated the amount of income tax due for payments made from Mr D's Pension Portfolio between 1 February and 14 March 2018
- its error had resulted in it deducting too much tax from Mr D's payments
- to rectify the situation it had made a payment of £766 to Mr D's bank account in respect of the tax Mr D had overpaid
- it apologised for any inconvenience or distress caused

Further to Aviva's letter Mr D decided to purchase a burial plot for himself (for £575) in the cemetery where his father was laid to rest. He intended to use the money he expected to receive from Aviva to cover the cost of this purchase.

As the £766 Mr D was expecting from Aviva wasn't received, he queried the matter with his financial adviser.

Aviva later wrote to Mr D on 7 November 2018. In summary it said:

- its 29 October 2018 letter was wrong. It was sorry for the mistake which had occurred
- it should've confirmed Mr D had in fact underpaid tax of £766
- as a gesture of goodwill it wouldn't be asking Mr D to pay the £766
- it had paid Her Majesty's Revenue and Customs (HMRC) the tax underpayment on Mr D's behalf, so his tax position was in order and there was nothing further he needed to do

Further to this Mr D raised a complaint with the help of his financial adviser. Mr D's adviser said Aviva had failed to treat Mr D fairly, failed to communicate properly and overall provided poor service at a very difficult time. Mr D's adviser confirmed Mr D had used a proportion of the money he'd expected to receive from Aviva to purchase a headstone for his late father.

On 24 January 2019 Aviva responded to Mr D's complaint. In summary it said:

- it was sorry for any trouble and upset caused and appreciated Mr D's loyalty to Aviva
- it took complaints of this nature very seriously and so it had written off Mr D's tax liability to HMRC
- although it understood Mr D's frustration it didn't feel a further payment was required in the circumstances

Mr D wasn't happy with Aviva's conclusions, so he complained further.

Aviva issued its final response to Mr D's complaint on 17 April 2019. In summary Aviva said:

- it apologised for the issue it caused when it originally sent Mr D a letter saying it would be crediting his account with £766. This was an error on its part and it subsequently informed him that he owed HMRC that amount
- it had paid HMRC the £766 tax Mr D owed so Mr D had no liability to it or HMRC for this amount
- it noted that in addition to the £766 it had written off and paid to HMRC, Mr D was looking for a further payment of £575 which he'd paid for his father's headstone after he received its letter saying it would be making a payment to his bank account
- by writing off the £766 payable to HMRC it felt it had addressed Mr D's complaint and treated him fairly

Unhappy with Aviva's response, Mr D referred his complaint to our service.

One of our investigators considered the matter and in summary said although Aviva had made errors, she thought the fact Aviva had written off the tax Mr D owed HMRC was enough to resolve the matter. She didn't think Aviva needed to do anything further.

Mr D responded saying he was extremely disappointed with our investigator's conclusions. He said he wouldn't have taken the action he did (at a very difficult time) were it not for Aviva's mistakes. Mr D explained that he'd trusted Aviva's letter and only found out there'd been errors when he asked his financial adviser to find out where the £766 he was expecting in his account was. Mr D said he still didn't feel Aviva had taken responsibility for what happened.

As no agreement could be reached, the matter was passed to me for a final decision.

my findings

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'm not intending to uphold Mr D's complaint. I'll explain why, but before I do, I should emphasise that while I've taken note of the correspondence, arguments and comments made by both parties, I have limited my response to what I consider to be the issues central to this complaint.

I should firstly say I have real sympathy for Mr D. I can appreciate it will have been both frustrating and disappointing to have experienced the level of service he has from Aviva regarding the matter of his tax underpayment. Especially at an already challenging time following the very sad passing of his father.

Mr D is understandably concerned and deeply unhappy about what happened. Not only did Aviva make an initial error calculating income tax due from payments Mr D had received. It also compounded this error by misinforming Mr D about the mistake it had originally made. Ultimately Aviva unfairly raised Mr D's expectations.

There's no dispute about the fact Aviva made a number of errors or the fact that Mr D accepted what he was told by Aviva in good faith. The issue I have to decide is whether the action Aviva has taken satisfactorily resolves the matter considering what happened.

In his submissions to this service Mr D has said he'd like Aviva to pay him the £575 he paid to purchase a burial plot for himself following receipt of Aviva's erroneous October 2018 letter. He'd also like £150 for time spent and upset caused while having to resolve this matter.

I've carefully considered what Mr D has said, especially his assertion that were it not for Aviva's incorrect letter he wouldn't have purchased the burial plot he did.

I don't think Mr D would've necessarily spent the money he did on his burial plot were it not for Aviva's errors. He was to some degree entitled to rely on what Aviva told him and so understandably he spent some of the money Aviva led him to believe he would receive. I appreciate Mr D would like Aviva to pay him back the money he unwittingly spent but I don't intend to direct Aviva to do this. Mr T has had the benefit of the money he spent so to require Aviva to pay this back to him would constitute betterment. It wouldn't be fair for Mr D to benefit financially because of Aviva's mistakes. If I told Aviva to pay Mr D the £575 he paid for his burial plot he'd be receiving money he wasn't entitled to.

In a situation like this, we aim to put consumers back in the position they would have been in, had the error not occurred and the correct information been given. So for Mr D, the correct information was that he actually owed HMRC £766 in income tax. Aviva chose to pay this on Mr D's behalf. And given the level of disappointment and frustration Aviva caused I think this action appropriately reflects the seriousness of what happened.

I should say however that despite its errors, Aviva wasn't required to cover Mr D's tax underpayment. As a resolution it could've chosen to apologise and offer Mr D compensation for distress and inconvenience caused. This could've been in addition to it also requesting that Mr D pay the £766 he owed HMRC. The tax payment was always due and payable to HMRC irrespective of Aviva's errors. And as such Mr D was liable for it.

Had Aviva not covered Mr D's £766 tax liability I would've recommended that it pay Mr D some compensation for what happened in addition to its apology. But given what I consider to be the impact of Aviva's errors, the compensation I would've directed Aviva to pay would not have been to same level of Mr D's tax liability (£766) or the additional compensation Mr D is seeking (£725). As it stands I think Aviva's gesture of covering Mr D's tax liability exceeds the level of compensation I would've recommended overall. Because of this I consider the action Aviva has taken more than fairly recognises the trouble and upset caused to Mr D in the circumstances.

While I'm not directing Aviva to make the award I understand Mr D would like, in that I don't think Scottish Widows should be bound to take any further action, I should say that I do think it's entirely reasonable for him to expect Aviva to provide correct information. And it's unfortunate that in this case that didn't happen. I am genuinely sorry to hear of the impact that this has had on Mr D.

I don't underestimate or doubt Mr D's sincerity or strength of feeling in bringing his complaint to this service and I understand that my decision may come as a disappointment to him, but for the reasons I've explained I won't be asking Aviva to do anything further.

my final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 January 2020.

Chillel Bailey
ombudsman