

The complaint

Mr M complains that Aviva Life & Pensions UK Limited ('Aviva') treated him unfairly in the way that it reversed an ad hoc pension withdrawal for him. He explains that Aviva took too long to apply the reversal and to explain that it had been done. And he says that delay caused him to lose the opportunity to obtain a mortgage on a favourable interest rate.

What happened

Mr M had a pension with Aviva and requested an ad hoc drawdown from it of £50,000. And on 2 September 2021 Aviva wrote to Mr M providing an Income Drawdown variation form and a Key Features Illustration.

The illustration summary indicated that Mr M had requested a one-off taxable payment of £50,000. Which, the illustration explained, would leave him with £179,255.98 in his pension plan.

Mr M was paid his income payment and Aviva wrote to Mr M on 1 October 2021 explaining that he had 30 days from the date of that letter to change his mind and cancel his Drawdown payment. That letter was addressed to Mr M's address but failed to include his postcode.

Mr M explains that he didn't receive this letter at his address until 2 November 2021. He phoned Aviva and complained that he didn't receive the cancellation notice within the 30 days. And explained that he still wanted to exercise his right to cancel his Drawdown payment. Mr M was asked to provide his email address in that call which he did.

On 29 November 2021 Aviva sent an email to the email address that Mr M had most recently provided it. In it Aviva explained that it was prepared to allow Mr M to return the Drawdown payment and it would reapply that to his pension. It explained how he could return the funds. Aviva followed that up with a further email on 16 December 2021 reminding Mr M that he could return his funds.

On 17 December 2021 Aviva sent Mr M a response to his complaint. It explained that it didn't think it was responsible for the time taken for its letter to arrive, but that it had taken a commercial decision to allow the late reversal of the Drawdown given the circumstances.

On 27 January 2021 Mr M emailed Aviva saying that he'd had no answer to his complaint and asked again to reverse the Drawdown request. Aviva responded to this email on 4 February 2021 attaching a copy of its complaint Final Response Letter that was sent on 17 December 2021.

On 21 February 2021 Mr M transferred the net Drawdown payment back to the account details Aviva provided and emailed Aviva to let it know and asked for confirmation of receipt.

Mr M emailed Aviva on 6 March 2022 asking for an update on his repayment which was responded to on 8 March 2022 to say it was still being worked on. Mr M emailed Aviva again on 16 March 2022 for confirmation. And then phoned Aviva on 11 April 2022 to find out what was happening. He was told in that call that it was with Aviva's technical team but given no

explanation why it wasn't reapplied at that stage.

On 21 April 2022 Mr M called Aviva and explained he'd been corresponding since 22 February 2022 about his repayment to his pension. But Mr M wasn't given any update about the Drawdown reversal.

On 27 April 2022 Aviva emailed Mr M saying, *"the gross ad hoc of £50,000 has been added back onto the plan and HMRC has been advised that this payment has now been returned with no tax paid at present"*.

On 27 April and 7 May 2022 Mr M emailed Aviva asking how HMRC would refund overpayment of tax and he wanted written confirmation that he hadn't experienced investment loss for the time his withdrawal was waiting to be processed.

On 9 May 2022 Mr M contacted Aviva to ask for an up to date valuation that he said he needed for a mortgage application. He asked for it to be emailed to him. And that day Aviva sent Mr M an email that said that the value of his pension policy was £187,516 (not including the £29,225 still being applied).

On 12 May 2022 Aviva sent Mr M another complaint response about the time taken to reverse his Drawdown. It rejected his complaint saying it had been corrected on 21 April 2022 and he'd been told on 26 April that corrective reporting had been sent to HMRC.

Mr M called Aviva a number of times on 13 May 2022 saying that his complaint hasn't been dealt with. He said he still needed an accurate pension valuation for his pension application. And he still wanted confirmation that he hadn't lost out on investment returns.

Mr M called again on 17 May 2022 a number of times and Aviva logged another complaint that Mr M thought that Aviva had had his returned payment since February 2022 and had still not credited his pension fund. He was told his pension was valued around £183,000 on the call and Mr M still believed that to be wrong.

Aviva sent Mr M his pension valuation on 17 May 2022 with the valuation he was given over the phone. No additional explanation or context was provided about the reversal of his Drawdown payment.

On 18 May 2022 Aviva called Mr M to explain that the payment was applied back to his pension policy and he'd be sent confirmation of that. And Aviva emailed him to say, *"we can confirm that when your request was reversed the payment went back onto the plan with a date of 27 September 2021. This means that your fund has not been affected by the delay in correcting your plan."*

Mr M continued to chase Aviva through May and June 2022 as he did not believe the valuation he had been given had been correct. And on 28 June 2022 Aviva sent him another complaint response about his concerns. Aviva explained that it had reversed the Drawdown payment on 21 April 2022. And that the payment effectively went back into the plan as of 27 September 2021 so the fund wasn't affected by the delay in returning the payment. But Aviva accepted that it had failed at times to call him back and sent him £100 for the distress and inconvenience its service caused him.

Mr M didn't accept Aviva's explanation and made a further complaint about the way that his Drawdown payment had been reversed. He said that the failure to provide an accurate valuation had prevented him from securing the mortgage quote he wanted to and he was paying higher mortgage payments as a result.

On 12 July 2022 Aviva sent Mr M a further explanation regarding his pension fund. It explained that the number of units held in the funds in his plan had been returned to the position they would have been in on 27 September 2021 if the Drawdown payment had not been made. It also highlighted that the drop in fund value was due to the lower unit price of both of the funds Mr M held in his pension plan. So not because there was still an outstanding correction to be made.

Mr M referred his complaint to our service. This complaint has been considered by two investigators. The most recent giving the opinion that the following would be a fair and reasonable outcome:

- He didn't consider that Aviva were responsible for the fact that the Drawdown payment wasn't returned until 21 February 2022. This was because Aviva had sent the correspondence to the email address that Mr M provided it.
- He accepted that the Drawdown reversal had been applied by 26 April 2022 but didn't think that taking 64 days to apply the reversal was reasonable.
- He didn't think that the cause for Mr M being unable to secure the favourable mortgage was definitely the fact that Mr M didn't think he had an accurate pension valuation to send to the mortgage provider.
- He didn't think that the compensation Aviva had paid was adequate to reflect the distress and inconvenience its service caused Mr M. And thought that a figure of £500 would be fairer.

Aviva didn't agree with our investigator's opinion and the case has been referred for an ombudsman.

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.

When considering a complaint I take into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Aviva's actions here.

- PRIN 2.1 - Principle 6: A firm must pay due regard to the interests of its customers and treat them fairly.
- PRIN 2.1 - Principle 7: A firm must 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.

Having considered the circumstances in this case I think that Mr M's complaint should be upheld and that Aviva need to compensate Mr M further for its failings in this case. But, for similar reasons to our investigator, I don't agree that Aviva are responsible for the fact Mr M was unable to secure a better mortgage rate. I'll explain my reasons in what follows.

I'll first consider what happened after Mr M was paid his Drawdown income and his changing his mind and returning the payment.

The payment of £50,000 was correctly made following a legitimate request. And Aviva have shown that it sent Mr M a cancellation notice. Which Mr M says he received, although not until after the deadline passed. I've no reason to doubt that Aviva did not post that letter on time. It isn't responsible for post, although I note that it failed to include Mr M's postcode on the letter. Similarly, I've no reason to doubt that Mr M received the notice late as he explained. And I think that Aviva's subsequent decision to process the late refund was a fair way for it to deal with this issue for Mr M.

It let Mr M know about this decision by sending him emails to the email address that he gave them when he phoned up about the issue. I accept that Mr M says that they were sent to an incorrect email and it meant that Mr M wasn't able to return his Drawdown payment until he contacted Aviva about this later and was given the information again. But I am satisfied from the call recording that Aviva sent the information to the email it was provided by Mr M. Which wasn't unreasonable. Overall I don't think that Aviva has done anything wrong in this. And it still agreed to process the Drawdown return anyway, so Mr M need not have been adversely affected.

I'll now consider what happened after Mr M returned his Drawdown payment on 21 February 2022. Because this is where I think Aviva's service let Mr M down.

I understand that this may not have been a regular Drawdown reversal. But Aviva told Mr M that it would perform it for him. And therefore ought to have dealt with the request in a reasonable timeframe.

Aviva have shown us that Mr M made repeated and persistent contact with it on the phone and by email chasing the progress of this. And I've seen no evidence that he received any clear explanation about: the progress; when he could expect it to complete; or what the hold-ups were. It meant that Mr M had no idea what to expect from this process. Which meant that, as it dragged on, his level of distress increased.

Aviva had said that it wrote to him on 26 April 2022, by which stage the reversal had been completed. But I've seen no compelling evidence that would lead me to conclude that two months was a reasonable timeframe to get this done. And in that time, Mr M spent time chasing Aviva. Which would likely have been avoidable had he been provided with a clear expectation about the process.

Both Aviva and Mr M provided us with a great deal of correspondence from the period after Mr M returned his Drawdown payment. But our service still had to ask Aviva for evidence of how it reapplied the Drawdown to determine if the pension value was, in fact, correct. It then shared with us the email that it sent Mr M on 12 July 2022. This was the first correspondence that I consider provided a clear and unambiguous explanation to show that the refund was applied by restoring the units held in the funds to the pre Drawdown levels. And explained the subsequent drop in the pension fund as being attributable to the drop in unit prices (rather than the absence of either the Drawdown payment or tax relief on it). So I am satisfied that Mr M has not suffered any financial loss to his pension as a result of the Drawdown and subsequent reversal. His pension fund is exactly as it would have been.

This brings me onto what I think the remaining issue is. Which is whether or not Mr M ought to have known that the Drawdown had been reversed. And it is on this issue that I think Aviva repeatedly let Mr M down.

I understand that Aviva corresponded with Mr M on 26 and 27 April 2022. It was evident

from its phone call with Mr M on 27 April that Mr M didn't really understand what the email of 26 April meant. So Aviva sent him an email on 27 April 2022 that said:

"We apologise if the email we sent yesterday was not clear. The gross ad hoc of £50,000 has been added back onto the plan and HMRC has been advised that this payment has now returned with no tax paid at present."

So I think that Mr M ought to have considered that the refund had been processed. But it wasn't clear how that had been applied. And Mr M's response asked how HMRC will refund the overpaid tax, and he also asked for written confirmation that his pension fund wasn't disadvantaged by the time taken to reverse the payment. I think these were reasonable requests to make and Aviva ought to have been able to quickly answer and reassure Mr M about these issues. But did not.

What happened instead was that Mr M asked for an up to date valuation of his fund. And was told that its value was £187,516, not including the payment of £29,225 that was still to be reapplied. If the payment had already been reapplied as Aviva stated, then this information to Mr M was false. And caused the subsequent issues. It overrode the email he'd already been sent.

For context, I think it's relevant that Mr M understood that his pension fund had been reduced to around £180,000 after he'd taken his £50,000 Drawdown payment in September 2021. So, without any specific knowledge of the investment performance over the six months after the Drawdown – which I've no evidence to suggest Mr M ought to have had – I don't think this valuation would have looked odd to Mr M. The evidence from his calls and emails suggest he expected that his pension fund would return to something more like it's pre Drawdown level. So it was reasonable that Mr M believed this information and thought that his pension was still not corrected.

It is now apparent that the subsequent valuations that Aviva sent Mr M were correct. He was sent Pension Plan information dated 17 May 2022 showing the value was £183,518.98. But it wasn't accompanied by any explanation on the points that he'd asked. Specifically about how the refund had been reapplied. And, crucially to my mind, that the information he'd been given on 9 May 2022 was incorrect and why. Aviva needed to do more to address and correct the misunderstanding that its error caused. Simply sending a new statement didn't do that. Even if the information in the new statement was accurate.

Mr M made repeated calls to Aviva to try to clear up what he still thought was a mistake with his pension. And, as I've said, I don't think any of Aviva's responses addressed that in a fair and reasonable way until its email of 12 July 2022.

Putting things right

Mr M has explained that he was unable to secure a mortgage because he didn't have a pension valuation to send them. Our investigator has obtained information from Mr M that shows that mortgage offer was not guaranteed. And it wasn't just dependant on Mr M's pension statement. That pension had been rejected because of affordability but the decision could be appealed. And it appears likely that this was why Mr M needed the pension statement. What this means is that I can't say that Mr M would have been successful in appealing the mortgage company decision even if he'd submitted a Pension statement.

I've also considered that Aviva provided Mr M with a statement for his Pension Plan on 17 May 2022. Which was within a reasonable time of his request. I appreciate that Mr M chose not to submit that to his mortgage company because he didn't think it was accurate. But I think it satisfied the requirement and was the information he needed. Even though I

think it was reasonable for him to seek clarification on the accuracy of the information it contained. He could still have used it in his mortgage application.

It is for these reasons that I don't think it is reasonable to say that Aviva's mistake caused Mr M's mortgage payments to be higher.

Aviva have already offered to pay Mr M £100 for its failure at times to call Mr M back or respond to him. Were that the extent of the issues with its service, then I think that would be fair. But I don't think that this addresses the issues that I've referred to above.

Aviva sent Mr M repeated responses to his ongoing complaints without ever really addressing the issue. Even though its email of 12 July 2022 showed that it could have clearly explain what happened. This went on for many months and, having listened to all the call recordings from the attempts Mr M made to clear the matter up, the level of frustration he experienced was clear. He was caused far more distress and inconvenience than Aviva has so far addressed. I think that Aviva should compensate Mr M a total of £500 for the distress and inconvenience it caused him. If it as already paid him the £100 it offered then that will mean an additional £400 is due.

My final decision

I uphold Mr M's complaint. Aviva Life & Pensions UK Limited should compensate Mr M as I have set out above.

If payment of compensation is not made within 28 days of Aviva Life & Pensions UK Limited receiving Mr M's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 April 2024.

Gary Lane
Ombudsman