

The complaint

Mx O complained that Aviva Life & Pensions UK Limited hadn't done what they ought to have done, when they came to take pension benefits.

What happened

Mx O originally contacted Aviva as they wanted to access their pension on the grounds of ill-health. They originally had a workplace pension started by their employer with Friends Provident. Friends Provident were taken over by Aviva in 2015.

Mx O has been unable to work for some years due to poor health. Mx O says they have been paid the benefits from two other pension funds (which they say was less than £4,000 in total).

Mx O says that Aviva haven't paid them the money in their Aviva pension when they should have. Mx O doesn't think what Aviva have told Mx O about how the payment will need to be made is right or compliant with Mx O's needs.

Aviva told Mx O in 2021 they could pay Mx O the benefits held in the pension earlier than Aviva can usually, as they had the necessary material from Mx O's Doctor.

Aviva told Mx O that tax would need to be deducted by Aviva from the overall figure and paid to His Majesty's Revenue & Customs (HMRC) under the law. Mx O would have to claim any tax deducted back from HMRC (as appropriate). In February 2021 Mx O told Aviva they were speaking to HMRC about the tax position. Mx O went on to tell Aviva they didn't want to reclaim tax from HMRC as they had a complaint with HMRC.

Mx O told us that the amount of money involved is less than £6,000. And they don't think Aviva should pay the tax to HMRC as Mx O doesn't pay tax (they say their income is under the personal allowance threshold).

Mx O complained because they don't think Aviva have made reasonable adjustments in respect of their disabilities as Aviva ought to have done under the Equality Act 2010 to enable the benefits from the pension to be paid. Mx O says Aviva are holding Mx O's money unlawfully. And Mx O thinks the Equality Act ought to override the rules on tax. So Mx O wants this Service to say that Aviva must ignore the HMRC requirements because of the Equality Act and pay the total value of the pension to Mx O without deducting any tax.

Mx O was also unhappy that Aviva have responsibility for their pension when it was previously with Friends Provident. And Mx O didn't think Aviva had the power to hold the pension because Mx O didn't agree to Aviva taking over responsibility. Mx O let us know this was a less important issue for them.

Mx O complained to Aviva a number of times about this. Aviva didn't uphold the complaints about this and sent various responses and further information.

Mx O referred their complaint to this Service. They told us some information about their

disabilities and health and the impact these have upon them. Mx O told us that Aviva would not have been aware of all of this information.

Provisional decision

The Ombudsman shared her initial thinking on Mx O's complaint. The Ombudsman explained why she didn't intend to uphold the complaint. Mx O and Aviva had the opportunity to reply to the Ombudsman.

Mx O's response to the provisional decision

Mx O was not happy with the provisional decision. They told us they were dissatisfied with our investigation and that there were errors and factual discrepancies. They felt we had not done what we ought to have done. Mx O also let us know about aspects of our usual process that they didn't agree with, this included how we refer to personal information in decisions and our publication approach.

We provided information about our Service and invited Mx O to respond and provide additional information, including letting us know why they thought there were errors in the provisional decision and what they were.

Mx O let us know they did not want additional time to enable themselves or their advocates to consider the provisional decision further and respond, and they would not engage in further communications. Mx O also let us know more about why they were not satisfied with this Service and what their intended next steps would be. Mx O asked the Ombudsman to reconsider.

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 have not changed my thinking from that set out in my provisional decision. I am not upholding Mx O's complaint about Aviva. I have considered everything provided to this Service with care, including having taken careful account of all Mx O has told us, before reaching my final decision. Mx O will see that I have adapted how they are referred to from my provisional decision. They have declined to let us know their preferred pronouns.

I am sorry this will disappoint Mx O. However I don't think Aviva have done anything wrong here. I am satisfied Aviva have been fair and reasonable in the way they made adjustments to support Mx O when it came to claiming the money from their pension and they have explained what they have to do and why. The law requires Aviva to deal with tax in the way they explained. This doesn't mean Mx O will lose out, as HMRC will repay any tax overpaid.

I understand Mx O isn't happy with HMRC and what Mx O thinks they would be required to do to reclaim any tax. But that isn't something I consider Aviva to be responsible for or to need to do anything about here.

Usually people cannot access money held in a pension arrangement until they are aged 55. Where a person has ill-health, the law (including HMRC requirements) allows for that person to potentially receive money from their pension plan before the age of 55. Here Aviva have the required medical information.

Where a person has serious ill-health, and they are not expected to live for longer than 12 months then they may be able to receive the money from their pension tax-free.

However this is not Mx O's position. They are in a second category. The second category covers the position where someone has ill-health and they are unable to continue working and doing their job due to their health, but they are not expected to die within the next 12 months. In this position a person may be able to receive money from their pension before the age of 55. However any money received is treated in the same way it would be if the person was accessing their pension at the age of 55. This means that a person will still be entitled to a tax-free sum. And any other money received from the pension is considered to be income and is subject to tax. This is the position Mx O is in.

This is a well-established position and pension providers like Aviva are required to act as required by the law which includes HMRC requirements. The main law that covers the position can be found in the Income tax (Earnings and Pensions) Act 2003 and the Income Tax (Pay As You Earn) Regulations 2003, (as revised).

Because of this Aviva have acted fairly and reasonably. They assisted Mx O and adjusted their usual procedures when Mx O contacted them about accessing the pension. Aviva went on to explain what was needed and what would happen next, including how they needed to pay Mx O and why there needed to be a deduction for tax. It is reasonable for Aviva to be expected to comply with the law as it applies to them and how they pay out from the pension plans they hold. I don't consider it reasonable here for Aviva to take into account potential HMRC requirements and considerations in respect of tax and procedure.

I understand that Mx O thinks Aviva aren't following the law and they say Aviva ought to pay the money held in the pension without deducting any tax. Mx O says Aviva are behaving unlawfully because of the Equality Act.

It's not our role to say whether a business has acted unlawfully or not, that's a matter for the Courts. Our role is to decide what's fair and reasonable in all the circumstances. In order to decide that, however, we have to take a number of things into account including relevant law and what we consider to have been good industry practice at the time. So although it's for the Courts to say whether or not Aviva has breached the Equality Act, we're required to take the Equality Act into account, where relevant, amongst other things when deciding what is fair and reasonable in the circumstances of the complaint. And I have done so here.

Aviva's approach has been reasonable and fair when it comes to supporting Mx O in being able to access the money in their pension. I can see they helped originally in communications with Mx O's Doctor and obtaining the necessary medical information.

In addition Aviva adjusted their usual claim process. And since then their explanations and information about what needed to be done, including about how they need to pay the money, have been accurate and in-line with the law. Aviva signposted various places for additional support and explained how Mx O could go about reclaiming the tax from HMRC.

As Mx O hasn't completed Aviva's adjusted retirement process, I don't think Aviva has acted unfairly or unreasonably by not paying the retirement claim out. It's fair and reasonable for Aviva to require the process here to be completed before making a payment. Here I have seen Aviva agreed to conduct the process on the phone. It appears the primary reason (and the reason I have been asked to consider) why the process has not concluded is because Mx O does not want tax deducted by Aviva as they do not want to reclaim any tax from HMRC as they do not consider HMRC's processes to be sufficiently accessible to them. I have not been told this is not the reason the process has not concluded. This isn't something

Aviva ought to be required to take into account. As such I don't require Aviva to do anything further or do anything different here.

Mx O thinks the Equality Act ought to be considered to override any law and regulations about pensions. And Mx O thinks that paying the total amount of their pension fund without deducting tax ought to be a reasonable adjustment under the Equality Act. And that making sure Mx O doesn't have to reclaim tax from HMRC ought to also be a reasonable adjustment. Mx O also suggests Aviva's refusal to pay the full value without deducting tax is discriminatory.

In other words, Mx O thinks Aviva has failed in their duty to make reasonable adjustments under the Equality Act. I've taken the Equality Act 2010 into account when deciding this complaint, given that it is relevant law. I've ultimately decided this complaint based on what's fair and reasonable. If Mx O wants a decision that Aviva breached the Equality Act, then this is a decision that needs to be made by a Court.

The making of reasonable adjustments here would be to remove the barriers faced because of a person's disability so they can access and use a service in the same way, as far as this possible, as someone who's not disabled. The Equality Act provides for this. And service providers must make adjustments where a person is disadvantaged, and it is reasonable to make changes to remove the disadvantage. This can include for example making changes to practices and processes, to ensure a person can access or use the service.

What is 'reasonable' depends on things such as an organisation's size and nature, and the nature of the services provided, and the public function carried out. The organisation also needs to consider how effective the adjustment will be, as well as the extent to which the adjustment might be disruptive. An organisation is only required to make adjustments that are reasonable.

Having taken everything into account I don't think it likely that a Court would decide that requiring Aviva to act not in accordance with the law and requirements on pensions, tax and income is a reasonable adjustment here under the Equality Act, nor that it is discriminatory not to do so. I don't think it is likely the Court would say it is something Aviva ought to be required to do.

I haven't seen anything that makes me think Mx O is prevented from accessing Aviva's services. Aviva have provided assistance so far and offered to make the payment to Mx O, the issue is that Mx O doesn't agree with Aviva making the payment in the way they say they need to.

Aviva's requirement to deduct any tax under the law and requirements that are in place, is not stopping Mx O accessing their pension funds in a way that is reasonable, nor is it an act that is likely to be considered any form of breach under the Equality Act. Compliance with the law is a legitimate aim and requirement for Aviva here.

Mx O says that filling in HMRC's forms to reclaim tax would be difficult. This appears to be the main problem Mx O thinks will be caused by Aviva deducting any tax. But Aviva cannot know with any certainty here what support and adjustments HMRC may have available for Mx O, nor even whether Mx O will be eligible to reclaim tax. Nor do I think it is something Aviva are, or ought to be required to take into account here.

In Mx O's particular complaint, I have explained what I think a Court might likely decide. Even if I'm wrong about that, I still consider Aviva has acted fairly and reasonably in all the circumstances, and for the reasons I have set out.

Mx O has been unhappy that the value of their pension has changed since they first started trying to access it. It is not unusual to see the value of a pension fluctuate reflecting the value of the investments and the performance of financial markets. This has been seen in recent years. The activity in respect of Mx O accessing the Aviva pension has been going on for some time, however I don't consider there is any unreasonable delay that ought to be attributed to Aviva here. I have not seen any specific complaint has been referred to us about the value of the pension.

I previously explained I had seen what was said about Aviva taking over from Friends Provident, and that Mx O told our Investigator this wasn't their main complaint. To assist I identified that Aviva acquired responsibility for holding Mx O's pension when they acquired the group of companies that Friends Provident was part of. And as such, this was not a complaint I would uphold. Mx O's original pension was set up by an employer who decided who would provide the pension. When Aviva acquired the work of the other group, this included Mx O's pension, and Mx O would not have been able to refuse for this to happen.

My final decision

For the reasons given I am not upholding Mx O's complaint about Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mx O to accept or reject my decision before 25 June 2024. This allows for Mx O to receive this Decision by their preferred mode of delivery.

Louise Wilson
Ombudsman