

The complaint

Mrs T complained to Aviva Life & Pensions UK Limited (Aviva) in April 2022. She hadn't been receiving statements for her pension policies since 2007. She'd been unable to review her pension or move away from an underperforming fund. Further, Aviva had said she had enhanced tax-free cash (100% of the value) in one of these policies but on the day it was due to be paid Aviva asked Mrs T to call them and told her she wasn't entitled to 100%.

What happened

Mrs T's complaint has been investigated by one of our investigators. He set out what had happened in detail in the view he issued on 25 August 2023. I'm not going to repeat everything here and what follows is just an outline of the key events.

Mrs T had been a member of her employer's defined contribution pension scheme. She left service and became a deferred member in 2006. After 2007 she didn't get any statements. In 2013 she contacted the scheme to find out about her pension. She was told the scheme had been wound up in 2010 and benefits moved to Norwich Union (now Aviva).

Mrs T contacted Aviva, quoting the one policy number she'd been given. Aviva provided details of the other policy in 2014 but Mrs T didn't realise then that the policy number was different and that there was a second policy. She only found out in early 2022 when she was considering taking tax free cash from the policy she did know about. Aviva suggested she might have enhanced tax free cash and asked her to complete a Salary Information Form. Ultimately that led Mrs T to see she had two policies – a Variable Money Purchase Plan and a Company Investment Account. The first was invested in Aviva unit linked funds and the other in Aviva's Pension Assured Fund.

Mrs T complained to Aviva about not providing information and not tracing her. Aviva's failure to send regular statements meant she hadn't been able to review her policies on an annual basis. She hadn't seen how badly one policy was performing and missed the opportunity to move out of the underperforming fund or transfer.

Aviva told Mrs T a loss assessment would be undertaken to compensate her and put her back in the position she'd have been in, if the mistakes hadn't happened. But Mrs T was later told that no loss assessment would be done.

Mrs T went ahead with taking her tax free cash in September 2022. By then she'd had three letters from Aviva, all saying she had a 100% tax free cash entitlement. But on the day she was expecting the cash lump sum to be paid into her bank account she was told – after calling Aviva and being on hold for over an hour – that 100% tax free cash wasn't available. Aviva couldn't then say what the correct figure was or when it would be provided.

Various tax free quotations were received. One issued on 15 September 2022 said tax free cash of £16,522.27 was available for one policy. But a revised quote was later issued showing £19,985.29, an increase of £3,463.02. Further revised quotes were issued in November 2022 for £20,072.05 and £23,212.83.

Aviva issued several final response letters and offered compensation totalling £1,350.

Our investigation

The investigator who initially looked into Mrs T's complaint said that was fair and reasonable. But he also said Aviva should undertake the loss calculation initially offered. Mrs T's concerns centred on the policy invested in the Pension Assured Fund. Moving out of the Fund before the policy's selected retirement date (SRD) can mean a Market Depreciation Discount (MDD) is applied. In March 2014 there was no MDD. But, in April 2022, when information about the policy was provided, there was a MDD of £8,471.63. The value of the policy as at 18 May 2023 was £35,054.06 but subject to a MDD of £7,458.44 which would apply to any fund switch or transfer out.

Mrs T's position was that she'd missed the chance of switching out of the Pension Assured Fund was the MDD was zero. Aviva had withdrawn their offer unless Mrs T could provide proof of advice to switch funds or transfer out around October 2013. But Aviva knew she hadn't had such advice and she didn't have information that would've allowed her to take advice. The investigator said he wasn't aware of what funds Mrs T could've accessed instead. The alternative was for Aviva to allow a transfer out with no MDD although transferring might mean Mrs T lost the right to tax free cash in excess of 25%.

Mrs T accepted the investigator's view. Aviva was unhappy about the loss assessment and what the investigator had said about any MDD not applying. Aviva said the MDD was part of the conditions of the policy and any transfer would automatically take it into account. So Aviva would have to make up the difference with the MDD as a separate payment to any receiving scheme. Aviva said Mrs T hadn't been able to provide information about what funds she was looking to switch to in October 2013. So funds that had performed best since then could be suggested and some evidence as to what she'd likely have invested in was required.

A new investigator reviewed the complaint. He suggested, to get over the issue about evidence as to what fund(s) Mrs T would've invested in, that an index based on Mrs T's appetite for risk could be used. She'd undertaken a risk tolerance assessment with her financial adviser last year and came out as balanced. Which would support using the FTSE UK Private Investors Total Return index.

Aviva didn't agree. Aviva acknowledged they'd previously said a loss assessment would be carried out, but pending evidence from Mrs T. Without that, Aviva would consider Mrs T wasn't looking to make changes to her investments. Aviva said the crux of the matter was when Mrs T was aware of the (second) policy. Aviva said a routine trace had been carried out in 2013. Mrs T had changed address in 2004, which Aviva was unaware of until 2013. It was the customer's responsibility to notify any changes in contact details. If Mrs T was unaware of the policy before 2013, that wasn't Aviva's fault. She knew about it from November 2013 and was in a position to make changes. So Aviva wasn't responsible for any potential investment loss from then until now. If Mrs T wanted to transfer away before the maturity date in January 2032, a MDD would still apply, as per the terms and conditions. It wouldn't be fair to other customers for Aviva to cover the MDD.

Mrs T referred to the regulator's guidance (FG 16/8) issued in December 2016 about the fair treatment of long standing customers in the life insurance sector. She refuted any suggestion that Aviva had contacted her in 2013/2014. She referred to documents which showed she'd got in touch with Aviva, not the other way round. She said Aviva was now claiming they'd contacted her because it helped their case – someone who didn't keep up to date with their pensions was unlikely to be proactive in moving their pension or employing a financial adviser. The fact that she was able to complete Aviva's Salary Information form

using payslips from 2002 – 2006 which she'd kept shows she was organised and interested in the progress of her pension.

The investigator had said she'd informed the employer's scheme of her new address prior to leaving in 2006. But she'd moved in 2004 so her new address had been on the system for two years. Aviva should've linked the policies, which would have led to accurate quotes for the tax free cash. It was her, not Aviva, who'd discovered she had a second policy in early 2022. She also provided copies of statements from 2022, which showed a MDD of £2,269.79, and 2013 which showed no MDD.

The investigator reviewed the case, taking into account Mrs T's and Aviva's further comments before issuing an updated view on 11 October 2023. He didn't think Aviva needed to do anything more. He said the main area of disagreement was about any loss calculation. He referred to what Aviva had said about why allowing a transfer without applying the MDD (or refunding it) wasn't reasonable. He said, although Mrs T may not have known she needed advice if she didn't know she had the policy, what she was likely to have done in 2013 had she known about the policy had to be considered.

Given the time to Mrs T's SRD and that she'd aware that values rise and fall over the period of an investment, the investigator couldn't say with any degree of certainty that Mrs T would've transferred her policy due to its performance relative to her other policy. There was nothing to indicate she was looking to realign and/or change strategy with her existing holdings as she hadn't done anything with other investments she had. The investigator didn't think it would be fair to ask Aviva to calculate potential losses when Mrs T couldn't show she'd have done anything different with the policy in 2013 even if she'd known about it and when the MDD was and always had been part of the policy conditions.

Mrs T wanted to correct some of what the investigator had said. In summary:

- Aviva had failed to send annual statements from 2009, not 2010. The last statement she'd received from the employer's scheme was January 2008, not 2007. She reiterated that she'd moved in 2004 and advised her new address. She wasn't a 'gone away' customer. She set out what she thought might have happened in 2010 and when she'd mistakenly been referred to as an active member of the employer's scheme. She also suggested Aviva may have deleted her address in April 2008.
- Aviva then failed to link the policies. Similar had happened to another scheme member. And, after confirming Mrs T had another policy, Aviva failed to take both policies into account in calculating the available tax free cash.
- Aviva's offer to carry out a loss calculation wasn't always based on her providing evidence that she intended or was considering to transfer. She referred to what the original investigator had said about why a loss calculation should be undertaken.
- The statements provided in May 2022 showed there was no MDD in January 2013. If she'd been given the information she'd requested in October 2013 she could've moved her pension without triggering any MDD. In early 2022 the MDD was £2,000 and increased to £8,000 later that year. In January 2021 it was only £291. Aviva's failure to keep her informed prevented her from moving her pension in 2013 when the MDD was zero. Aviva should pay the MDD now. Other customers wouldn't be adversely affected as the cost would come out of Aviva's profits.
- Her complaint about the tax free cash wasn't, as Aviva had said, about the amount but that Aviva hadn't made a final check until the day the funds should've been sent to her bank account. Aviva had distorted events to try to minimise the error.
- As to what would've likely happened in 2013/2014 she'd have been disappointed with the value of the policy invested in the Pension Assured Fund just as she was when she finally received information about its value in 2022. If she'd been able to examine

the value of both policies she'd have considered moving the policy. She'd have seen that the MDD fluctuated and the January 2013 statement which showed there was no MDD might have been another prompt.

- Aviva had said returns had been modest since 2009 due to historically low interest rates. It was a poor performing investment for someone with a considerable amount of time to retirement and the management fees were higher.
- To decide what she'd have done in 2013 it was necessary to look at what she did in 2022 when she found out she had another policy. She contacted a friend for advice on a financial adviser because she was considering combining the two pots and moving to another provider. She'd been proactive and not simply taken as correct information that Aviva provided. She'd enlisted the help of an adviser and a pension expert.
- She wouldn't have been as relaxed in 2013 (at age 46) about her retirement savings as the investigator had said. The suggestion seemed to be that transferring pensions would only be considered when approaching retirement but that was too late. Her 2022 investment risk profile indicates she wouldn't be happy with a poorly performing pension. Typical advice for someone who was some way from retirement with pension savings invested conservatively would be to consider moving at least some funds into potentially higher growth assets.
- If she'd known she had two policies she'd have made comparisons and thought about combining them.
- In Autumn 2013 she'd sold a property. The market was good at the time and she wanted to capitalise on her investments. She suspected that had prompted her to review all her investments and led to her tracing her pension.
- Her husband met with his financial adviser once a year, often at home. If she'd been aware she had two policies it was highly likely she'd have sought advice from her husband's adviser or at least considered doing so.
- The decision shouldn't be based on the probability of her having attempted to transfer her policies. Through no fault of hers, Aviva had failed in their legal duty to provide her with annual information about her pensions and she'd lost the opportunity to review them. Aviva should honour the offer to undertake a loss assessment. She also asked if Aviva had routinely been checking the performance of her policies against other Aviva policies.

Mrs T also didn't consider the compensation offered was adequate to cover the stress and inconvenience over the last 20 months. Amongst other things she said she'd had to be proactive and had spent much time dealing with Aviva. She said Aviva had distorted the position regarding the tax free cash and side stepped the issue that Aviva hadn't double checked the tax free cash entitlement until the day it was due to be paid. Mrs T maintained the loss assessment first suggested by Aviva – and without any proviso that she'd need to prove she was going to transfer the funds – should be undertaken. She said Aviva's attempts to distort the facts to their own advantage had added to the stress she'd suffered.

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.

Although I've concentrated in my decision on what I see as key, I've read and considered everything. I think the central remaining issues are whether Aviva should be required to undertake any loss calculation and if the sums offered by way of compensation are appropriate. Having considered everything I'm in agreement with the investigator and I'm not going to say a loss calculation is necessary. And I think the sums offered by Aviva for the distress and inconvenience Mrs T has suffered are fair and reasonable. I know Mrs T feels

very strongly about what's happened and I realise that my decision is likely to come as a disappointment to her.

As to when and how she became aware of the second policy, Mrs T has stressed it was down to her efforts and not, as Aviva has suggested, a routine tracing exercise undertaken by Aviva. I note what Mrs T has said about having changed address in 2004, some two years before she left her former employer's scheme. As she's said, her correct address would've been held on her employer's system for some two years before she left. So, when the employer's scheme wound up in 2010, it's unclear why Mrs T's correct contact details weren't passed over to Aviva and recorded against both of the policies that related to her former employer's scheme, albeit for different periods of service.

Mrs T considers it important to recognise that the second policy came to light because of her efforts rather than as a result of anything Aviva did. From what I've seen, I think it was due to enquiries made by Mrs T. And I'd agree she isn't someone who simply forgot about their pension and made no effort to keep the provider up to date with their contact details. And the fact that she retained her salary slips from 2002 to 2006 indicates good record keeping. But, and given that it's probably unlikely that we'd be able to find out exactly what went on, I've concentrated on what's actually happened, rather than how it came about and whether explanations given by Aviva add up.

The existence of another policy did come to light in 2013 and Aviva did send information about it to Mrs T. But it seems she didn't notice the policy number shown was different to the number of the policy she had been receiving information about. Arguably Mrs T should've noticed that and so going forwards known that she did in fact have two policies. It seems she found that out in 2022 when she looked at past statements including one from 2007/2008 which showed two policies with different policy numbers and start dates. I think Mrs T would've received that statement – she's said the last statement she received from the former employer's scheme was in January 2008. So she had the information she needed, although she only found out later when she revisited it.

And, even if Mrs T didn't receive that 2008 statement at the time, that wouldn't be Aviva's fault. Up to when the former employer's scheme was wound up and benefits bought out with Aviva, which was in 2010, the scheme was responsible for issuing statements and information to members, including deferred members such as Mrs T. There's been some debate about what her status was understood to be but the fact remains that it wasn't Aviva's responsibility to provide information to Mrs T prior to 2010.

But Aviva, having located the second policy, didn't then consistently send annual statements for both policies to Mrs T. So, despite what I've said about Mrs T potentially knowing she had two policies in 2008 and/or 2013, I don't think it's fair to say that Mrs T was or should've been aware of both policies from then and so in a position to make changes.

Against that background I've considered if Aviva should undertake the loss calculation Mrs T seeks and which Aviva did initially indicate (more than once) they'd be prepared to carry out. I note what Mrs T says about that not being on the proviso there was evidence to suggest she'd have made changes. But, whatever the position, Aviva is no longer prepared to do a loss calculation. And I'd only make a direction if I was satisfied, first, that it was Aviva's fault that Mrs T was unaware of the two policies and, secondly, if I thought Mrs T would likely have done something about either or both of the policies had she known sooner of their existence. If that was the case then I'd then need to go on to consider what she'd likely have done – such as switch funds or transfer.

I'm satisfied on the first point – I don't think there's any dispute that Aviva should've sent statements showing both policies to Mrs T from 2010 onwards. Aviva didn't do that

consistently and so I don't think Aviva can reasonably say it's Mrs T's fault that she was unaware of the position.

But the second issue isn't so straightforward. As the investigator noted, where, as here, what would've happened if things had been done differently isn't agreed, we'll reach a decision as to what's likely to have happened on the balance of probabilities, that is what we consider is more likely to have occurred. We'll take into account all the evidence and information that's been provided and the wider circumstances.

Aviva's position is that Mrs T wouldn't have taken any action. Aviva says there's no evidence – such as discussions between Mrs T and her financial adviser about her investments generally and which would've encompassed these pension policies. Mrs T says differently – that if she'd been aware there were two policies she'd have reviewed them, possibly with the assistance of her husband's financial adviser.

I've noted all Mrs T has said about that. It doesn't seem she was in contact with any financial adviser during the period in question to review her pension or other investments. But she's pointed to what she did in 2022 as indicative of what she'd have done in 2013 – that is, look into both policies and their respective performances, with a view to combining them or transferring. I agree that what happened when the situation came to light can be relevant. But, on the other hand, it doesn't always follow that someone would've acted earlier as they actually did, especially if it's some ten or so years later.

I'm not looking at things with the benefit of hindsight. Mrs T has pointed to the fact that the January 2013 statement showed that no MDD would apply. But that may not have been seen as particularly significant at the time or as something which might point to an opportunity to switch funds or transfer. It may not have been anticipated then that a MDD might later be imposed, the amount of which might be significant. I note that in January 2021 the MDD was only £291. It seems to have increased significantly the following year, initially to £2,000 and then to £8,000. I don't think the lack of any MDD in 2013 would necessarily have prompted Mrs T to consider switching or transferring.

I note what Mrs T has said about not being happy with what she'd have viewed as a poorly performing policy. And I accept what she says about it sometimes being too late, close to retirement, to make changes, particularly those which might involve taking a higher degree of investment risk. As retirement approaches the aim may be to maintain the value of accumulated pension savings and not embark on a higher risk strategy when there might be insufficient time for any losses to be made up before a need to access the retirement funds arises. So I can see, given the length of time to her retirement, Mrs T may have felt in 2013 that she could afford to take a higher degree of investment risk. But that doesn't mean she'd have actually made any changes.

And it's the case that, as retirement approaches, there's understandably an increased focus on pension provision, including how pension policies have performed. I'm not suggesting that Mrs T didn't keep track of her investments or that she wouldn't have kept an eye on how her policies were doing. As I've said I don't think she was that sort of investor. But proximity to retirement may give a different perspective whereas I have to decide if she'd have done anything different earlier.

Mrs T has said she didn't consider making changes to the policy she knew about because she was happy that her investment was safe. But, had she known she had two policies, that might've changed things. Although I can see that having two policies might have prompted some comparisons, both policies arose from her membership of her former employer's scheme and so were, in effect, part and parcel of the same pension provision. And, if Mrs T's focus was on ensuring her investment was safe, I'm not sure that approach would've been

different, if she'd known she in fact had two policies and which meant the benefits she'd accumulated in the employer's scheme were worth more than she'd thought.

I note Mrs T's comments about interest rates being low from 2009 onwards. But, as I've said, I'm not looking at things with the benefit of hindsight and taking into account that interest rates have remained very low until relatively recently and which has been reflected in the performance of the policy invested in the Pension Assured Fund. Mrs T has also queried if Aviva has been checking or benchmarking the performance of her policies. But I don't think there's any obligation here on Aviva to do that.

I've also noted what Mrs T has said about having sold a property in 2013 and which may have led her to review her investments and trace her pension. Although it seems she could've accessed advice from her husband's financial adviser, there's nothing to show she did seek financial advice, whether about the policy she knew about or her pension provision or investments generally. I think it's difficult to say that would've changed if she'd known there was another policy. She's also said that a former colleague was advised to transfer out of the employer's scheme. But, as Mrs T acknowledges, their circumstances will have been different and so it can't be assumed that, if Mrs T had sought advice, a transfer would've been recommended in her case.

I do acknowledge that it isn't easy for Mrs T to establish, after the event, what she'd likely have done if things had happened differently. But, from what I've seen and taking into account all she's said, I'm unable to say I'm persuaded she'd have taken any action earlier. On balance, I think she'd have likely left the policies as they were.

Our aim in awarding compensation is to try to put the consumer, as far as possible, back in the position they'd be in if things had gone as they should've done. Where a business has done something wrong that doesn't automatically mean that compensation for financial loss is due. It will depend on whether, as a result of the business' error, any loss has resulted. We can't award redress (or, as here, require a business to undertake a loss assessment and pay any loss that's identified) if we don't think any financial loss has flowed from the mistake(s).

Although I'm unable to make any award for financial loss, Mrs T did suffer considerable distress and inconvenience. That was also the case with the payment of her tax free cash. Mrs T's complaint about that wasn't about the amount – her entitlement is dependent on legislation and HMRC regulations – but the way in which Aviva handled the matter, including not making a final check until the day the funds should've been sent to her bank account. I can see that would've caused Mrs T significant distress and inconvenience, particularly as she had to call Aviva and it took some time to get through. There was then some delay and confusion over the coming months in working out Mrs T's correct entitlement.

In considering distress and inconvenience, Aviva has upheld most aspects of Mrs T's complaint and offered, in total, compensation of £1,350. Where, as here, compensation has been offered, I need to consider if it's fair and reasonable.

Mrs T has set out the various compensation offers and broken each of them down by reference to the complaint points addressed by Aviva. I can see the point Mrs T is making – that the compensation offered and analysed on an issue by issue basis – isn't sufficient. But our awards may be more modest than Mrs T might expect. Further, not every problem will carry the same weight. And there may be some overlap between the various points raised. Our approach to compensation for distress and inconvenience is to take a more overall view rather than apply a tariff for each and every mistake or concern and some of which will have had more impact than others.

I've taken that approach here and looked more at the cumulative amount - £1,350 – that's been offered and how that fits in with what I'd expect in a case such as this and taking into account the impact the matter overall has had on Mrs T. We take into account the time taken to sort things out. I note what Mrs T says about having spent an inordinate amount of time dealing with the matter. Again we don't usually consider awarding compensation based on an hourly rate. Instead we'll take into account the time spent in assessing the impact and distress and inconvenience that's been suffered.

An award of over £750 and up to around £1,500 could be fair where the impact of a business's mistake has caused substantial distress, upset and worry and which might have meant serious disruption to daily life over a sustained period with the impact felt over many months or sometimes over a year.

I think that's broadly consistent with the situation here. And the sums offered are towards the top end of the range indicated. I think they are fair and reasonable to compensate for the distress and inconvenience Mrs T has suffered in consequence of Aviva's errors and/or poor handling of the situation. I'm not going to say that Aviva needs to offer a higher amount. Nor am I going to say that Aviva must carry out a loss calculation. I'm not sure what, if any amounts have been paid by Aviva. Any sums paid can be deducted from the total compensation of £1,350 that's due.

My final decision

Aviva Life & Pensions UK Limited has offered to settle Mrs T's complaint by paying in total £1,350 compensation. I think that's fair in all the circumstances.

So my decision is that Aviva Life & Pensions UK Limited should settle Mrs T's complaint by paying £1,350.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 31 January 2024.

Lesley Stead
Ombudsman