

The complaint

Mrs M complains that Aviva Life & Pensions UK Limited failed to treat her appropriately when she was deciding how to take pension benefits due to her following the death of her husband.

What happened

Mrs M has been assisted in making this complaint, initially by her son and more recently by a financial advisor. But in this decision, for ease, I will generally refer to all communication as having been with, and from, Mrs M herself.

Mrs M's husband sadly passed away in November 2021. At the time he was older than 75 years of age and held pension savings with Aviva. Aviva determined that Mrs M was entitled to be the beneficiary of those pension benefits following her husband's death.

Aviva wrote to Mrs M in February 2022. It confirmed the pension benefits that were due to her, and provided her with a number of options about how those benefits could be paid. Around a week later Mrs M signed an application form, asking for the pension benefits to be paid to her as a single lump sum. Aviva completed that payment to Mrs M in April 2022.

Mrs M's husband was over 75 years of age when he passed away. So, as Aviva explained when it sent the benefit options information to Mrs M, the payment was taxable. So it was required to deduct income tax, using an emergency tax code, from the payment it made to Mrs M.

Mrs M complained to Aviva about the deduction of the income tax around a week later. She said that she was unaware that income tax would be deducted from the payment, and asked whether a cooling off period applied during which she could return the payment. Aviva said that it was unable to allow the payment to be returned, and any questions about the tax implications of the payment would be better answered by HMRC.

Mrs M's complaint has been assessed by one of our investigators. He thought that Aviva had made it sufficiently clear that the payment would attract income tax. He didn't think Aviva was responsible for providing Mrs M with any advice, or guidance, about how she should proceed. So he didn't think the complaint should be upheld.

Mrs M didn't agree with that assessment. She said that, due to the recent bereavement, she was particularly vulnerable at that time, and Aviva should have taken additional care in its dealings with her. She said that Aviva had failed to make her sufficiently aware of the taxation of the payment, and that it had failed to identify the additional support she should have been given. As a result she said that she had needlessly paid a significant amount of income tax. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs M and by Aviva. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I would like to start by offering my condolences to Mrs M, and her family. I am sure that the circumstances that led up to the matters I am considering here were very difficult, and no doubt continue to be so.

Mrs M has said that she was particularly vulnerable at the time she was making her decision about the pension benefits. And she says that I should apply the same assessment of vulnerability to her son, who completed the application form for the lump sum payment, on her behalf. I think that is a reasonable conclusion to reach, and so in line with the regulator's expectations, I would expect Aviva to show concern for the vulnerable state that Mrs M might have been in at that time.

But I think it is important to note that the regulator's expectations on the treatment of vulnerable consumers are not prescriptive, in the sense that they might be for example when looking at the checks needed to be performed before offering a loan. Instead, and in my view quite rightly, the guidance expects firms to identify any particular issues faced by a consumer at the time, and adapt their communications and product offerings accordingly.

It appears that Mrs M initially got in touch with Aviva by phone around two months after her husband's death. In response to that call Aviva sent her a letter explaining the options she had available in relation to her late husband's pension savings. I think that was a reasonable approach, as it enabled Mrs M to consider her options in her own time, without the pressure that might be faced during an extended phone conversation. It doesn't appear that Mrs M gave any indications to Aviva that she would find it difficult to read, or understand, information that was presented in writing.

The letter that Aviva sent to Mrs M didn't suggest that there was any time pressure, or deadline, for making her decision. It encouraged her to carefully consider the options she had available, and said that Aviva would always recommend that decisions of this nature be discussed with a financial advisor before being finalised. Aviva also offered Mrs M access to its specialist claims management team either by telephone or email.

Aviva asked Mrs M to call when she had reached her decision. But it told her that if she was choosing the lump sum option, and preferred not to call, she could simply return an included form. Mrs M took that option and sought the assistance of her son to complete the form that she sent back to Aviva a few days later.

So I am satisfied that Aviva took account of the potential vulnerability of Mrs M when it sought her decision on how the pension benefits should be paid. It provided information in writing so Mrs M had time to consider her decision when she was best able. Aviva recommended that Mrs M should seek advice from a financial advisor, and it offered the opportunity to contact its specialist team either by phone or email. And it placed no time constraints on the decision Mrs M needed to make, allowing her the opportunity to carefully consider her options when she felt up to it.

But I don't think that should be the end of my consideration of the complaint. I also need to look at the information that was provided to Mrs M, and make sure that I am satisfied she was given enough information about her choices.

Aviva wasn't providing Mrs M with any advice, or a recommendation, about which of the benefit options would be best for her circumstances. So the choice of how the pension benefits should be paid was essentially something for Mrs M to decide for herself. But Aviva did need to ensure that it provided sufficient information on which Mrs M could base that decision.

The crux of Mrs M's complaint is that Aviva failed to make it sufficiently clear that the lump sum payment would suffer the deduction of income tax. She says that had she been made aware of how the payment would be taxed she would have most likely decided to take withdrawals from the pension savings over a number of years to minimise the income tax she'd need to pay.

I think I should reiterate here that Aviva wasn't providing Mrs M with any advice. And that is even more important when considering how a payment might affect her tax affairs. Aviva would have no knowledge of Mrs M's other sources of income and the effect any other income might have on her individual taxation liability. So although I would expect Aviva to provide some general information about the taxation of pension payments it would be very unlikely that it could, or should, provide information specific to Mrs M's own circumstances.

The information that Aviva sent to Mrs M set out the amount of lump sum she would be paid. But that was immediately followed by some explanatory text that said, "*This payment amount is taxable*". And immediately beneath that text was a further section headed "*Things to remember*". That then went on to tell Mrs M that, "*HM Revenue & Customs rules may affect the amount of lump sum and how it is taxed*".

So I think Aviva made it clear to Mrs M that the lump sum payment would be taxable and HMRC rules would affect the amount she would receive. As I've explained earlier, it was for Mrs M to ascertain how the payment of the lump sum would affect her individual taxation situation – that wasn't information that Aviva could provide to her.

When Aviva made the payment to Mrs M it was required to deduct income tax using an emergency tax code. That meant that it deducted income tax amounting to £44,729 from the lump sum payment. I understand that Mrs M might be able to reclaim some of that deduction from HMRC depending on her personal tax situation. But, Aviva simply did what was required by the relevant legislation in making that deduction.

I appreciate that my decision will be disappointing for Mrs M. But I am satisfied that Aviva treated her fairly and in line with the regulator's expectations given her recent bereavement. I think that Aviva made it clear that taking her pension benefits as a lump sum would require her to pay income tax on the money she received. And I think that Aviva acted correctly in calculating the income tax it should deduct. So I don't think the complaint should be upheld.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Aviva Life & Pensions UK Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 24 August 2023.

Paul Reilly
Ombudsman