

## **The complaint**

Mr R has complained that Aviva Life and Pensions UK Limited has not implemented a pension sharing order in respect of his former wife's pension plan.

## **What happened**

Mr R's former wife holds a pension plan with Aviva. When Mr R and Mrs R divorced, it was agreed under their divorce settlement that Mr R would receive a share of Mrs R's Aviva pension plan.

On 28 January 2022 Aviva received the Extract Decree of Divorce from Mr R. The Decree of Divorce had been extracted on 14 January 2022.

On receiving the Extract Decree of Divorce, Aviva replied to Mr R to say that to implement the pension sharing order they also needed to have received the Extract Registered Minute of Agreement and Mr R's instructions on his new pension provider that the pension share was to be paid to.

Aviva also told Mr R that under Scottish pension sharing provisions these documents had to be provided within two months of the date of the Decree of Divorce. As the Decree of Divorce received by Aviva had been extracted on 14 January 2022, this meant that Aviva needed to have all documentation required to implement the pension sharing order by 14 March 2022.

On 7 February 2022 Aviva wrote to Mr R to explain again that they had to receive all the documentation they needed to implement the pension sharing order within two months from 14 January 2022.

In their letter Aviva went on to say that to implement the pension sharing order they needed to be in receipt of the Registered Extract Minute of Agreement and the Schedule Annex, together with his completed pre-implementation form and confirmation from his chosen receiving scheme that they can accept the pension credit.

On 11 February 2022 Aviva received a signed letter of authority from Mr R's financial adviser, allowing Aviva to release information on the pension plan that the pension sharing order applied to. On 28 April 2002 Mr R's financial adviser next wrote to Aviva to ask if the pension sharing order had been implemented.

Aviva replied to Mr R's financial adviser by return to say that they had received the Extracted Decree of Divorce and drafts of the Minutes of Agreement from Mr R, but they hadn't received the extracted Registered Minute of Agreement or any instruction from Mr R on who his new pension provider would be.

On 29 April 2022 Mr R sent Aviva a copy of the Extract Minute of Agreement.

Aviva explained in their reply to Mr R that because they had not received all the documentation needed for the pension sharing order to be implemented by the deadline of

14 March 2022, then, under Aviva's understanding of the provisions in the Welfare Reform and Pensions Act 1999 applying in Scotland, the pension sharing order made in the Minute of Agreement had lapsed. Aviva went on to explain that this meant that Mr R would now need to apply to the Sheriff Court for an extension order, so that they could then implement the pension sharing order.

In May 2022 Mr R's lawyers sent Aviva a further copy of the Extract Minute of Agreement and a newly Extracted Decree of Divorce, which had been extracted on 12 May 2022.

In reply to Mr R's lawyers Aviva explained their understanding was that a newly extracted Decree, such as the one sent to them by Mr R's lawyers, is provided to replace a lost or damaged Decree. This meant that Aviva would not accept the newly extracted Decree as a solution to the Decree that had elapsed on 14 March 2022.

On 8 June 2022 Mr R's lawyers wrote to Aviva to say that in their opinion the second Extract of 12 May 2022 had the same legal effect as the first Extract. Mr R's lawyers also told Aviva that they could confirm this with the Sheriff Court.

Aviva therefore contacted the Sheriff Court as requested by Mr R's lawyers to seek confirmation on this point from them. On 1 September 2022 Aviva wrote to Mr R's lawyers to say that they had received a reply from the Sheriff Court. In their reply, the Sheriff Court had told Aviva that they were not able to answer Aviva's question.

Aviva went on to explain to Mr R's lawyers that as they had received the above response from the Sheriff Court, then their view remained that Mr R still needed to apply to the Sheriff Court for an extension order. Only when an extension order had been granted would Aviva be able to implement the pension sharing order.

On 4 May 2022 Mr R's financial adviser wrote to Aviva to complain on his behalf. They complained that Aviva had not implemented the pension sharing order.

On 31 May 2022 Aviva responded to Mr R's complaint. Aviva said that they'd told Mr R the documentation that they needed to have received by 14 March 2022 for them to implement the pension sharing order. Aviva said that Mr R had not provided them with the documentation that they had told him they needed by this deadline. Aviva therefore didn't uphold Mr R's complaint.

Mr R wasn't happy with Aviva's response, so he brought his complaint to the Financial Ombudsman Service. One of our Investigators reviewed Mr R's complaint. The Investigator's view was that Aviva had not made any errors and therefore didn't uphold Mr R's complaint.

Mr R didn't agree with the Investigator's view, so his complaint has been brought to 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.

On 28 January 2022 Mr R sent an email to Aviva. Within this email Mr R said: *"I believe that you were waiting for the decree of divorce certificate in order to start (sic) the complete the change the policy over to myself. I have attached a scanned copy of the document"*.

Mr R also explained that his financial adviser was completing a review of his pension policies and would be contacting Aviva to request details of the pension to be transferred to him.

On the same day Aviva replied to Mr R to say: *“Thank you for sending us the Decree of Divorce and for confirming your current address.*

### ***What we need***

- *Complete Extract registered Minute of Agreement and Schedule to the Minute of Agreement received together in full*
- *Confirmation of where you wish to move your awarded pension credit (this can be noted on the Schedule to the Minute of Agreement or please complete and return the Pre-implementation form I have attached to this e-mail)*
- *Confirmation from your chosen receiving scheme that they’re in a position to receive your awarded credit”.*

In their reply to Mr R, Aviva went on to say: **“Please note:** *Under Scottish Law Aviva must have the Extract registered Qualifying Agreement, Schedule to the Minute of Agreement, Decree of Divorce and confirmation of where you are to transfer your awarded pension credit within two months of the date of the Decree of Divorce, if you need more time, you’ll need to apply to the Sheriff Court for an extension order”.*

I think that Aviva were telling Mr R what documents they needed so that they could implement the pension sharing order. I also think that Aviva were telling Mr R the deadline for when they needed to receive these documents and that if Aviva didn’t receive the required documents within this deadline, then Mr R would need to apply to the Sheriff Court for an extension order.

Mr R has said that Aviva told him in early 2021 that they already had the documentation needed to implement the pension sharing order, except for the Decree of Divorce. I’ve not seen any evidence to show whether Mr R was told this by Aviva in early 2021.

However, when Mr R emailed Aviva on 29 January 2022, in response to Aviva’s email of 28 January 2022 above, he said:

*“When I spoke to your advisor at the time I was told that all that was needed was the divorce certificate to transfer the pension to me. Why does this need to be resubmitted? I note that you are looking for a pension scheme to transfer this to. As this point I don’t have 1. My pension advisor is in the process of conducting a review of all my policies then we are looking to consolidate them to 1 scheme. This will include this policy. When you receive the request regarding this policy can you please submit him the details requested? If you require anything else please don’t hesitate to contact me”.*

I think from Mr R’s comments in his email of 29 January 2022 it seems likely that he believed at that time that the only document he needed to give Aviva for the pension sharing order to be implemented was the Decree of Divorce.

However, Aviva then replied to Mr R’s email of 29 January 2022 on 31 January 2022. In this reply Aviva said: *“Until we have received the below court documents informing us there is to be an order applied to Mrs (R’s) plan we are unable to transfer the pension credit that may be awarded to you or provide your financial adviser with any information that you are entitled to.*

### ***What we need***

- *Complete Extract registered Minute of Agreement and Schedule to the Minute of*

*Agreement received together in full*

- *Once you have made a decision confirmation of where you wish to move your awarded pension credit*
- *Confirmation from your chosen receiving scheme that they're in a position to receive your awarded credit".*

Aviva then went on to say again that they needed to be in receipt of the above documents by 14 March 2022.

I think from Aviva's reply they are clearly setting out the documents that are needed for the pension sharing order to be implemented, and they had to receive these documents by 14 March 2022. I also think that Aviva are explaining that they didn't just need the "*divorce certificate*" as Mr R had said.

Therefore, even if I could be persuaded that Aviva did tell Mr R in early 2021 that he only needed to provide Aviva with the Decree of Divorce, I think that Aviva clearly told Mr R on 31 January 2022 that this is not the case. Aviva also wrote to Mr R again on 7 February 2022 to tell him what documents they still needed to implement the pension sharing order and that they needed the documents by 14 March 2022.

Mr R has also said that if he'd known that Aviva still needed the outstanding documents then he'd have sent them when he sent his Decree of Divorce. However, Aviva promptly replied to Mr R tell him that there were other documents outstanding, so I think it's reasonable that he would then have known that further documentation was needed for the pension sharing order to be implemented.

I therefore think that Aviva had taken reasonable steps to tell Mr R of their requirements for the pension sharing order to be implemented and what the deadline was for the documents to be provided.

Aviva have said that the Minute of Agreement extracted in 2020 was not sent to them until April 2022 and instructions on the receiving provider were not sent until July 2022, so in both cases after the deadline of 14 March 2022.

Mr R has said that instructions on his receiving pension provider were sent to Aviva before 14 March 2022. However, I've not seen any evidence to support this. Mr R's financial advisers sent a letter of authority to Aviva, but this didn't tell Aviva where Mr R's pension sharing credit was to be transferred to, instead it was an authority for information to be released.

I've seen a copy of the pre-implementation order, which contained details of the pension scheme that Mr R had chosen to accept his awarded pension credit, and this wasn't signed by Mr R until 12 July 2022, and therefore wasn't received by Aviva until July 2022, as they've said.

In May 2022 Mr R's lawyers sent Aviva a further copy of the Extract Minute of Agreement and a newly Extracted Decree of Divorce. This further copy had been extracted on 12 May 2022.

Aviva explained to Mr R's lawyers that they would not accept the newly extracted Decree as a solution to the Decree that had elapsed on 14 March 2022. Aviva explained their reasons for this to Mr R's lawyers.

In response, Mr R's lawyers wrote to Aviva to say that in their opinion the second Extract of Decree had the same legal effect as the first Extract. Mr R's lawyers also told Aviva that they could confirm this with the Sheriff Court.

Aviva did as Mr R's lawyer's asked and contacted the Sheriff Court. When Aviva received a response from the Court, they were told that the Sheriff Court could not provide them with a legal opinion.

I therefore think that Aviva did as Mr R's lawyers had requested but were then unable to obtain confirmation from the Sheriff Court that the second extract of Decree had the same legal impact as the first Extract. I therefore think that Aviva acted reasonably when following the request from Mr R's lawyers.

Aviva has also been asked by Mr R to accept a disclaimer signed by both Mr R and Mrs R to allow Aviva to complete the transfer from Mrs R's pension to Mr R's pension plan. Aviva have said that if the transfer was made outside of the implementation of a pension sharing order, then the transaction would be an unauthorised pension payment, resulting in tax penalties. Aviva therefore declined to accept a disclaimer. I don't think that Aviva are being unreasonable in their response to this request from Mr R.

I therefore don't think that Aviva have acted unreasonably in their dealings in this matter. I think that they explained to Mr R what documents they needed so that they could implement the pension sharing order. They also confirmed the time deadline in place.

When Mr R then questioned Aviva about further documents being needed, I think that Aviva replied promptly to reiterate what documents were needed and to tell Mr R again that they had to have these by 14 March 2022. Aviva then wrote to Mr R again to repeat what documents were needed and the deadline for sending these in.

However, Mr R didn't send the requested documents to Aviva until after the deadline of 14 March 2022 had passed. I therefore don't think that Aviva were responsible for this deadline being missed.

I am therefore not upholding Mr R's complaint.

### **My final decision**

I am not upholding Mr R's complaint against Aviva Life and Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 24 October 2023.

Ian Barton  
**Ombudsman**