

The complaint

Mrs T complains that Aviva Life & Pensions UK Limited failed to provide her with sufficient information when she was deciding to put some pension benefits into payment.

What happened

Mrs T held pension savings that had been accumulated over a number of years from freestanding additional voluntary contributions ("FSAVCs"). But the FSAVC plan that Mrs T held was designed to allow her to purchase an annuity when she retired. So, when Mrs T told Aviva that she would like to access her pension benefits flexibly, it explained that she would need to transfer her FSAVC savings into a self-invested personal pension ("SIPP").

Mrs T first discussed the situation with Aviva in November 2022. She was approaching her 55th birthday in mid-December and was keen to take a pension commencement lump sum ("PCLS" – often known as tax free cash) as soon as she was allowed by the relevant legislation.

Following her initial call with Aviva, Mrs T completed an application to open her SIPP on 21 November. Her pension savings were then transferred from the FSAVC plan, and applied to the SIPP on 30 November. In line with Mrs T's instructions when the SIPP was opened all her pension savings were invested into a single fund, with the purchase settling on 6 December.

When Mrs T spoke with Aviva on 30 November she was told that taking her PCLS would require two stages. She would first need to ensure that her SIPP held sufficient cash for the payment to be made by selling some of her investments. And then she would need to instruct the withdrawal of the PCLS, that would result in the remainder of her pension savings moving from an uncrystallised to a crystallised account.

Mrs T requested the withdrawal of her PCLS on 21 December. On that call she also expressed some concerns about the fall in value of her pension investments. Mrs T complained about the time it would take for her pension investments to be sold, and that if she had been given better information she could have left some of the transferred monies in cash, so protecting their value and speeding up the payment of the PCLS.

Mrs T's complaint has been assessed by one of our investigators. She noted that Aviva wasn't providing Mrs T with any financial advice, so it was Mrs T's decision to invest all her pension savings at the time of the transfer. And she noted that the value of the PCLS (being 25% of Mrs T's pension savings) couldn't be calculated until the date of the withdrawal was determined. So even if Mrs T had retained some of her pension investments in cash, the value of the PCLS would have fallen regardless. The investigator said that Aviva had paid the PCLS to Mrs T within a reasonable period of time. So the investigator didn't think the complaint should be upheld.

Mrs T didn't agree with that assessment. 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 T 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.

It doesn't seem that Mrs T is making any complaint about the need to transfer her FSAVC pension savings into a new pension arrangement, or the time that it took for that transfer to be concluded. It appears that those steps were concluded in good time, and well before Mrs T turned 55 and was able to withdraw any pension benefits. But, although in this decision I am only considering what happened when Mrs T wanted to take her PCLS, I will naturally reflect on the steps Mrs T needed to take to allow that to happen.

I think it might be helpful here to set out the two processes that needed to be combined in order for the PCLS to be paid to Mrs T. Any withdrawal from the pension savings needed to be funded from cash holdings in the plan. That was clearly set out for Mrs T on the application form that she completed online in order for the SIPP to be opened. That information said;

"Please note that if you want to take cash from your Pension immediately, the amount you need to withdraw needs to be available in your account as cash, with no transactions pending, rather than invested in your selected funds"

But before that cash could be used, Mrs T would also need to instruct Aviva to pay her the PCLS. When that instruction was made Aviva would need to calculate the value of Mrs T's pension savings in order to determine the 25% payment she was entitled to receive. That value would obviously be dependent upon the market value of any investments that were held in the SIPP, plus any cash holdings.

As our investigator explained, Aviva wasn't providing Mrs T with any advice about her pension savings. So it was for Mrs T to decide how, and indeed whether, her pension savings should be invested. But Aviva did need to ensure that it provided Mrs T with sufficient information on which she could base any decisions she made.

When Mrs T opened the SIPP she instructed Aviva to invest the whole of her pension savings into a single investment fund. Aviva would have provided Mrs T with a range of funds that she could choose from, and information about the risks and investment approaches of those funds. And Mrs T would have been able to choose to leave some, or all, of her pension savings uninvested.

Mrs T has said that she wasn't told by Aviva that she could, or perhaps even should, have left some of her pension savings uninvested so that they could be used to provide the cash needed to finance the PCLS payment. But I think Aviva making that suggestion would have presented significant risks, both that it was providing Mrs T with advice, and that the advice would have been inappropriate.

There was a period of at least three weeks between the transfer being instructed, and the time at which Mrs T would have been able to receive her PCLS payment. So there would have been some inherent risks in leaving some, or all, of the pension savings uninvested over that length of time. Whilst doing so would have protected their value, there was a risk that an upturn in the market would leave Mrs T receiving a smaller PCLS than she might have been able to. Ultimately it was for Mrs T to decide which approach to take.

With the benefit of hindsight it is now clear that it would have been better for Mrs T to leave some or all of her pension savings in cash as she approached her 55th birthday. She says that between the investment and taking her PCLS the value of her pension investments fell by around 2%. I can appreciate how disappointing that would have been for her. But there is generally an acceptance that any investments can fall as well as rise from day to day.

I think it would have been entirely inappropriate for Aviva to suggest to Mrs T that she might want to keep some of her pension savings in cash following the transfer. But even if it had, I have no way of knowing whether Mrs T would have followed that approach, and particularly if she had been warned about the potential to miss out on any investment gains that might have increased her PCLS.

It seems to me that Aviva has dealt with Mrs T's pension transfer, and the payment of her PCLS, in a timely manner. I think that the reason behind Mrs T's disappointment, and her subsequent complaint, is due to a fall in the value of her pension investments. That is clearly not the responsibility of Aviva. I appreciate that, with the benefit of hindsight, she might make a different decision today about whether or not to have invested her pension funds at the time of the transfer. But that was entirely her decision to make, and not something on which Aviva should have provided any guidance or advice. So I don't think this 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 T to accept or reject my decision before 24 August 2023.

Paul Reilly
Ombudsman