DRN-4146705

The complaint

Miss B complains Aviva Life & Pensions UK Ltd didn't explain that a withdrawal from her personal pension would trigger her Money Purchase Annual Allowance ('MPAA'), causing her distress, inconvenience and financial loss.

What happened

As part of consolidating her pensions, Miss B transferred the full amount in her Aviva personal pension to a new provider in November 2021. But a dividend of £161.76 was later paid into her Aviva pension. After communicating with Aviva, Miss B withdrew this amount into her bank account.

Aviva wrote to Miss B on 24 August 2022 to say this withdrawal had triggered her MPAA, and her annual allowance for money purchase contributions was now set at £4,000 and she may incur an MPAA charge on the excess over £4,000.

In September 2022, Miss B complained to Aviva that it hadn't explained the withdrawal of £161.76 would trigger her MPAA. In October 2022, Miss B repaid the £161.76 to Aviva. And to prevent an MPAA charge, she changed her status in her employer's pension plan from 'active' to 'partial-membership'. Under this, Miss B could contribute between £1 and £3,333 per month; she chose to reduce her pension contributions to £1. But no employer pension contribution would be made; in lieu of this, Miss B would be paid a non-pensionable salary supplement ('NPSS') set at 10.5% of pensionable salary, and subject to tax and national insurance contributions ('NI').

In communication with Miss B, Aviva said she'd not yet provided enough evidence of her actual financial loss. But it thought her financial loss was £334.60 between October and November 2022, based on her lost tax relief of £95.43 per month on her own pension contributions, and her receiving £71.87 less per month in employer pension contributions. Aviva said it would reconsider this amount if Miss B provided further evidence of her loss.

On 14 November 2022, Aviva issued its final response letter ('FRL') to Miss B's complaint. It accepted it hadn't ensured she was aware withdrawing the £161.76 would trigger her MPAA. And that if it had, she wouldn't have gone ahead. Aviva said it had put things right by:

- Accepting the £161.76 back into Miss B's pension.
- Reversing Miss B's MPAA so it was no longer triggered.
- Paying Miss B £750 compensation for the unnecessary distress and inconvenience Aviva caused her between August and October 2022.
- Paying Miss B £334.60 compensation for the unnecessary financial loss it had caused her in October and November 2022.
- Setting out an explanation of this matter in the FRL so Miss B could share it with HMRC.

In January 2023 Miss B came to our Service. She thought Aviva should provide an 'official' explanation she could share with HMRC regarding this matter. And should reconsider the amount of compensation given the ongoing distress, inconvenience and financial loss it was causing her by not putting things right to her satisfaction, as she was still in partial-membership status in her employer's pension scheme.

Aviva told us it hadn't automatically notified HMRC about the MPAA being triggered, so it didn't notify HMRC of the MPAA reversal either. Overall, Aviva thought it had done what it could to put things right and that Miss B hadn't mitigated her losses.

Ultimately, our Investigator thought that by the time Aviva had issued its FRL on 14 November 2022, it had done enough to put its error right. So Aviva wasn't responsible for any financial loss Miss B might have experienced after this.

Miss B disagreed. She said that if she hadn't changed her status in her employer's pension scheme to partial-membership, she would have incurred an MPAA charge. That the explanation in Aviva's FRL wasn't suitable for sharing with HMRC and her employer, as it should have been separate and on headed paper, and included the date, her personal details, and her plan number. And she suggested she'd mitigated her loss by coming to our Service within a reasonable time. Miss B also thought Aviva's calculation of her financial loss wasn't clear. Miss B set out alternative calculations to say her financial loss ran from October 2022 to March 2023 and totalled £2,223.78, comprising:

- Lost tax relief of £95.83 per month on her own pension contributions.
- Lost tax relief of £230.00 per month on her employer's contributions.
- Investment loss of £44.80 per month, since she and her employer had paid less than usual in pension contributions.

When asked to comment on this, Aviva said Miss B hadn't provided any evidence to support her calculations. Its FRL met Miss B's requirements and she'd not passed on any specific requirements from HMRC or her employer. And Miss B could have mitigated her losses after its FRL; tax relief would be automatically applied if and when the missed personal contributions were paid into her pension, so without such a payment there was no financial loss. And employer contributions didn't attract tax relief for Miss B.

Our Investigator didn't change his view. Miss B provided updated calculations of her financial loss which said her loss ran from October 2022 to March 2023 and totalled £2,300.32, comprising:

- About £100.21 per month of additional income tax and NI contributions she'd paid on the income she'd received in lieu of her contributions to her pension.
- About £211.31 per month of additional income tax and NI contributions she'd paid on the income she'd received in lieu of her employer contributing it to her pension.
- Her employer also had to pay NI contributions on the income it paid Miss B in lieu of its monthly employer pension contributions, which meant Miss B received £71.87 less income per month from her employer.

When asked to comment on this, Aviva asked for Miss B's August to November 2022 payslips, plus her employer's payroll cut-off date so it could review whether to compensate Miss B further for lost tax relief. But Aviva said it would only seek to compensate Miss B for any tax relief she'd missed out on up to the point she could have restored her contributions.

Miss B told us her latest P60 showed a tax code change between September 2022 and March 2023, and she'd now provided Aviva's FRL to HMRC so this could be put right. But she thought this was another frustrating and inconvenient consequence of Aviva's error.

As agreement couldn't be reached, this complaint was passed to me for a decision.

At my request, Miss B provided her payslips and employer payroll cut-off information which I passed to Aviva for comment. Aviva said Miss B had paid more tax but received higher net pay, so she'd made a financial gain. That it didn't have enough information about her employer's pension scheme to comment on the difference between the NPSS set at 10.5% of pensionable salary and the employer's full contribution of 12%. But the compensation it had already paid would cover any financial loss it caused Miss B in October and November 2022 in any case.

I contacted Miss B and Aviva to explain why I thought the only actual financial loss Aviva had caused Miss B was investment loss totalling £134.40, but Aviva didn't need to do anything further about that as it had already paid her more than this in compensation for her financial loss. And that the additional £750 compensation Aviva had paid for Miss B's distress and inconvenience was fair and reasonable.

Aviva agreed and had nothing further to add. But Miss B didn't agree with my thoughts. In summary, she said her loss calculations were correct as she'd taken care to have them checked but I'd only addressed her investment loss, not all of the financial loss they set out. So she thought Aviva should pay her a further £815.56 for her financial loss, and that £750 wasn't enough compensation for her distress and inconvenience given how long this matter had gone on.

I'm now in a position to make my final decision.

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.

I'd firstly like to acknowledge that Miss B and Aviva have provided me with a great deal of detailed comments and evidence. I've carefully considered all of this, but I won't mention everything I've been provided with. I mean no discourtesy, it's simply that I'll only address the comments and evidence I see to be relevant in reaching a fair and reasonable outcome to the crux of Miss B's complaint, which is that Aviva didn't explain that a withdrawal from her pension would trigger her MPAA.

Aviva itself accepts it didn't ensure Miss B was aware this withdrawal would trigger her MPAA, and that if it had, she wouldn't have gone ahead with the withdrawal. As that's not in dispute, I don't need to consider that any further.

So what's left for me to consider is what would be a fair and reasonable way to put things right. Our Service's approach to this is to put the consumer back, as closely as possible, into the position they should have been in if not for the business' error. As part of this, we consider whether the business' error caused the consumer any unnecessary financial loss, distress and inconvenience. And we consider whether the consumer could reasonably have mitigated their loss.

Aviva argues that the time frame of Miss B's potential financial loss runs from October to November 2022, because it thinks that after it had provided its final response to her complaint ('FRL') on 14 November 2022, she could have taken steps to mitigate her loss by restoring the pension contributions to what they'd been before the issue arose. But Miss B's view is that because Aviva didn't settle the complaint to her satisfaction, her financial loss runs to March 2023. And she suggests she did mitigate her loss by bringing her complaint to our Service within a reasonable time.

I'm satisfied that when Aviva issued its FRL on 14 November 2022, it had by then given Miss B enough information to enable her to restore the pension contributions paid by both her and her employer to what they had been prior to Aviva's error, and without the worry that she might incur an MPAA charge. I say this because Aviva had:

- Accepted it made an error that wrongly caused Miss B's MPAA to be triggered.
- Made clear Miss B's MPAA had been reversed so it was no longer triggered.
- Accepted the incorrect withdrawal of £161.76 back into Miss B's Aviva pension.
- Paid Miss B compensation of £750 for her distress and inconvenience plus £334.60 compensation for her financial loss, albeit Miss B doesn't think this is sufficient.

In particular, Aviva had also set out an explanation of this matter in its FRL for Miss B to share with HMRC and any other parties she thought necessary. Miss B says the format of that explanation was unsuitable. But this seems to be her belief rather than anything HMRC has said about its requirements, as I understand Miss B didn't share Aviva's FRL with HMRC until June 2023, and she's not told our Service that HMRC has raised any issue with it.

So by 14 November 2022, I think Aviva had provided Miss B with enough information to allow her to mitigate her potential losses. That said, I don't think it's reasonable to expect that to have happened immediately. Miss B would have needed some time to raise this with her employer, and her employer would likely have taken some time to process things. In addition, her employer's payroll cut-off date was at the start of the month, and it was already halfway through the month when Aviva issued its FRL. So it's reasonable to think the pension contributions could have been restored by January 2023, and Miss B bringing her complaint to our Service didn't preclude this. I think it's likely that if Miss B had restored the pension contributions, she'd have begun to benefit again from tax relief and investment growth on the pension contributions, as she had done before the issue arose. Given all this, I'm satisfied the time frame of Miss B's potential financial loss runs from October to December 2022.

I've gone on to consider what financial loss Aviva caused Miss B during this time frame. I acknowledge Miss B says she's had her calculations checked and they are correct, and that I've not considered all of the financial loss they set out. As I say, I've considered everything provided to me. And I do think Aviva's error has caused consequences for Miss B. But I'm not satisfied these consequences amount to the actual financial loss Miss B believes she's been caused, as set out in her various calculations.

As I've explained, I need to consider the position Miss B should have been in if not for Aviva's error. Had Aviva not made that error, Miss B and her employer would have continued to contribute to her pension without interruption. It's my understanding that her employer's pension contributions wouldn't have attracted any tax relief for Miss B, and that her own pension contributions wouldn't have resulted in reduced NI contributions. But Miss B's own pension contributions would have been paid before she was taxed, therefore she would have paid less income tax because her tax would be calculated based on a lower amount of earnings. So Miss B's tax relief would be in the form of paying less income tax straight away.

Based on Miss B's testimony and payslips, I'm satisfied Aviva's error caused her to arrange for contributions to her pension to be minimised in October 2022. This meant her own monthly pension contributions were reduced from £239.58 to £1, and her employer's monthly pension contributions were reduced from £575 to nothing.

However, the funds that should have been contributed to Miss B's pension by her and her employer were instead mostly paid in lieu to Miss B, though I note she continued to pay a monthly pension contribution of £1, and her employer paid her £503.13 a month as a non-pensionable salary supplement. So Miss B's employer paid Miss B £71.87 less per month in lieu than it had been paying into her pension.

I've seen nothing to make me think Miss B is now unable to pay these funds (i.e. both the £238.58 and the £503.13 she received each month in lieu of pension contributions) into her pension. And my understanding is that if she paid these funds into her pension, *all* of them would attract tax relief at the higher rate of 40%. So I think this more than accounts for the tax related losses Miss B believes she's been caused across what I'm satisfied is the three-month time frame of her potential financial loss, as well as the £71.87 per month reduction in what her employer paid and any additional NI Miss B may have paid during that same three-month time frame.

That said, Aviva's error meant less was being contributed towards Miss B's pension. And given the relatively short period of time, I don't think it's reasonable to expect Miss B to have arranged an alternative investment for the funds she received in lieu of pension contributions. So, I'm satisfied Miss B's been caused an investment loss. Miss B estimates her investment loss to be £44.80 per month. I've not been provided with any documentary evidence to support this estimate. But I'm mindful it's a relatively small amount, and that asking Aviva to do a loss calculation would involve additional time and effort for both parties. Given all this, I think it's fair and reasonable for Aviva to simply use Miss B's estimate of £44.80 per month, to bring finality and certainty for the benefit of both parties. Therefore, across the three-month time frame of Miss B's financial loss, her investment loss totals £134.40.

Regarding an MPAA charge, Miss B has confirmed she's not incurred such a charge because she took preventative action by minimising the monthly pension contributions. So Aviva hasn't caused Miss B any unnecessary financial loss there.

Taking everything into account, I'm not persuaded that Aviva needs to pay Miss B any further compensation regarding her financial loss. Aviva has itself already paid Miss B £334.60 of compensation for her financial loss, and I'm mindful that if Miss B pays all the funds she received each month in lieu of pension contributions into her pension, she'll attract tax relief at the higher rate of 40% on all of those funds.

I've considered whether Aviva's error caused Miss B any unnecessary distress and inconvenience, and I think it did. She would have been distressed to receive Aviva's MPAA trigger notification letter of 24 August 2022 and worried she was at risk of incurring an MPAA charge. She was then inconvenienced by having to change her pension status and reduce her pension contributions to protect against a possible MPAA charge, and by having to return £161.76 to Aviva. Miss B will also be further inconvenienced by having to restore her pension status and contributions to what they had been, and by claiming her missing tax relief. Miss B highlights this matter has gone on for a long time and while I agree her distress and inconvenience has stretched over several months, I've explained why I think that by 14 November 2022 Aviva had given Miss B enough information to enable her to take steps to mitigate her loss. Overall, I'm satisfied that the £750 Aviva has already paid Miss B for her distress and inconvenience is fair and reasonable compensation for that.

My final decision

For the reasons set out above, I'm not asking Aviva Life & Pensions UK Ltd to do anything further to put things right here as I've seen that it has already paid Miss B the compensation I've referred to above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss B to accept or reject my decision before 17 November 2023.

Ailsa Wiltshire
Ombudsman