

Ombudsman's Determination

Applicant	Mr G
Scheme	The Nationwide Group Personal Pension Arrangement (the GPP)
Respondent	Aviva

Outcome

1. I do not uphold Mr G's complaint and no further action is required by Aviva.

Complaint summary

2. Mr G complained about issues relating to how Aviva managed his benefits in the GPP as follows:
 - when he instructed Aviva to withdraw his Pension Commencement Lump Sum (**PCLS**) in June 2020, it sold more units than required and then reinvested the surplus three days later at a higher unit price;
 - due to tax relief errors on contributions, on two occasions in September 2020, Aviva sold units without first obtaining his authority, and then did not explain why the transactions had been carried out; and
 - Aviva did not reply promptly to his emails and telephone calls when he tried to understand the situation.
3. Mr G said that Aviva's actions may have tax implications for him. However, since Mr G submitted his complaint to The Pensions Ombudsman (**TPO**), Aviva confirmed that it had paid Mr G's additional tax liability, and he would not be liable for any further tax.
4. Mr G asked for the fees he paid to Aviva since June 2020 to be reimbursed to him. He also wanted to receive an award that reflects the level of distress and emotional anxiety he suffered, and the considerable amount of time he spent dealing with Aviva.

Background information, including submissions from the parties

5. The GPP was a defined contribution occupational pension scheme. Mr G held an account in the GPP (**the Account**). Mr G's employer was Nationwide Building Society (**Nationwide**).

6. In December 2019, Nationwide made Mr G redundant, and he became a deferred member of the GPP.
7. On 14 April 2020, Aviva wrote to Mr G and asked him how he wanted to access his benefits in the Account (**the Retirement Letter**), as he would reach age 55 in June 2020. The letter stated that the current fund value of the Account was £212,941.54.
8. On 25 May 2020, Mr G emailed Aviva and said that he wanted to withdraw his maximum PCLS from the Account. He asked for the required documents to allow him to do this.
9. On 26 May 2020, the following actions took place:-
 - Aviva emailed Mr G and asked him to telephone it for security reasons.
 - Mr G emailed Aviva and queried the requirement for the telephone call. He stated the following:
 - he had already received the Retirement Letter;
 - he had telephoned Aviva on a previous occasion;
 - Aviva's website did not allow secure messaging; and
 - Aviva's telephone lines were busy with long waiting times.
 - Aviva wrote to Mr G and asked him how he wanted to access his benefits from the Account. The letter stated that the current value of the Account was £229,845.76.
 - In another letter to Mr G, Aviva confirmed that he wanted to start taking his benefits from the Account. It said that in the last 12 months he had paid £42,999.64 in contributions.
10. On 22 June 2020, Aviva sent Mr G a pension illustration, which stated the following:-
 - The current value of the Account was £238,551.23.
 - He had chosen to withdraw his maximum PCLS, which was currently £59,637.80. This would leave a balance of £178,913.43 that could be designated to an income drawdown account (**the Drawdown Account**).
11. Mr G has said that on 6 July 2020, he submitted his request to Aviva to withdraw his maximum PCLS from the Account. He has also said that at close of business on 6 July 2020, the Account held 89,742.64 units in the Aviva MyM MFS Meridian Global Equity Fund (**the Equity Fund**).
12. On 7 July 2020, Aviva sold 24,843.7043 units at £2.6558 from the Equity Fund (**the 7 July 2020 transaction**). The sale proceeds were £65,979.91.
13. On 8 July 2020, Aviva sent Mr G confirmation of the 7 July 2020 transaction.

14. On 9 July 2020, Aviva sent Mr G a pension illustration, which stated the following:-
 - The current value of the Account was £238,319.36. This had been moved into the Drawdown Account.
 - After taking into account a PCLS of £59,579.84, the value of the Drawdown Account was £178,739.52. This consisted of £6,380.93 in cash and £172,358.59 in the Equity Fund.
15. On the same day, Aviva sent Mr G a lifetime allowance (**LA**) statement. It stated that on 9 July 2020, Mr G had used £238,319.36 or 22.2% of his LA.
16. On 10 July 2020, Aviva purchased 2,398.8459 units at £2.6600 per unit in the Equity Fund in the Drawdown Account (**the 10 July 2020 transaction**). The purchase value was £6,380.93.
17. On 13 July 2020, Aviva sent Mr G confirmation of the 10 July 2020 transaction.
18. On 22 July 2020, after Mr G telephoned Aviva to query the 10 July 2020 transaction, it emailed Mr G. It apologised for the delay in replying and said that as more units than required had been sold to meet his PCLS payment, the surplus had been reinvested.
19. On the same day, Mr G emailed Aviva with the following points:-
 - He believed that the 7 July 2020 and 10 July 2020 transactions had put him in a worse financial position.
 - Before the 7 July 2020 transaction, the Account held 89,742.64 units in the Equity Fund. He had expected Aviva to sell 22,435.66 units, or 25% of his holding, in order to pay his PCLS.
 - At a unit price of £2.6558 on 7 July 2020, this would have provided sale proceeds of £59,584.62, and he would have continued to hold 67,306.98 units in the Equity Fund.
 - However, he had received a PCLS payment of £59,579.84, and retained 67,297.7816 units in the Equity Fund.
20. In his email, Mr G asked for clarification about the following points:-
 - Why did Aviva sell more units than required on 7 July 2020?
 - Why had there then been a repurchase of units at a higher unit price on 10 July 2020?
 - The sale proceeds on 7 July 2020 were £65,979.91, and the repurchase of units on 10 July 2020 cost £6,380.93, resulting in a net amount of £59,598.98. However, he had only received £59,579.84, a difference of £19.14.

- As Aviva had sold more than 25% of his holding, would this result in him incurring a tax liability?
21. Mr G submitted that he was owed £4.78 as PCLS and 9.1984 units in the Equity Fund.
 22. On 3 August 2020, Mr G emailed Aviva and asked for an update on its response.
 23. On 4 August 2020, Aviva emailed Mr G and said that it had passed his request to its Claims Team.
 24. On 24 August 2020, Mr G emailed Aviva and asked for an update and details of Aviva's complaint procedure. On the same day, Aviva replied and said that he would be contacted directly by the relevant team.
 25. Mr G has said that on 10 September 2020, he telephoned Aviva for an update.
 26. On 11 September 2020, Aviva sold 3,255.9150 units at £2.8191 per unit from the Equity Fund (**the 11 September 2020 transaction**). The sale proceeds were £9,178.75. There was no explanation about who authorised the sale or what it related to.
 27. On 14 September 2020, Aviva sent Mr G confirmation of the 11 September 2020 transaction.
 28. Mr G has said that during telephone calls with Aviva on 15 and 17 September 2020, it had suggested that the 11 September 2020 transaction was required due to a tax overpayment and the proceeds would be paid to HM Revenue & Customs (**HMRC**).
 29. On 17 September 2020, the following actions took place:-
 - Mr G emailed Aviva and asked for an update on its response. He also said that he understood that without his knowledge or authority, Aviva had sold units to pay a tax liability.
 - Aviva emailed Mr G and said that it had not yet started to review his complaint. It offered to telephone Mr G the next day.
 - Mr G emailed Aviva and said that he did not need a telephone call but asked when he could expect to receive a response.
 30. On 25 September 2020, Aviva sold 605.3633 units at £2.7449 per unit from the Equity Fund (**the 25 September 2020 transaction**). The sale proceeds were £1,661.66. There was no explanation about who authorised the sale or what it related to.
 31. On 28 September 2020, Aviva sent Mr G confirmation of the 25 September 2020 transaction.

32. Mr G has said that on 29 September 2020, he tried to telephone Aviva, but the number he had been given was not in use. He then emailed Aviva and asked for an update on its response.
33. On 30 September 2020, the following actions took place:-
- Mr G telephoned Aviva and asked for an update, which the Aviva representative was not able to provide. The representative suggested he submit a complaint to TPO.
 - Mr G emailed Aviva's Chief Executive Officer (**the CEO**) with the following points:-
 - It appeared that Aviva had mismanaged the sale of his funds before paying him his PCLS.
 - There were two other transactions which he had not authorised in respect of HMRC payments. He had not received a sufficiently detailed explanation of these payments and he did not believe it was appropriate for Aviva to deal with his tax matters.
 - These issues had caused him to suffer extreme distress, fear and anger, and had taken up a lot of his time.
 - Before submitting his complaint to TPO, he understood that he needed to raise a formal complaint with Aviva.
 - He provided a timeline of events.
 - Aviva telephoned Mr G with an update. It said that the discrepancy in his PCLS amount was due to the payment of the Account's annual management charge (**AMC**) on 9 July 2020. His other queries were expected to be answered the next day.
34. On 1 October 2020, Aviva emailed Mr G with confirmation of the discussion during the previous day's telephone call.
35. On the same day, Mr G emailed Aviva with the following points:-
- There had been no deductions in the Account on 9 July 2020 or any notifications of a deduction of an AMC. He submitted that AMCs had usually been £30 - £40 per month, paid at the end of each month.
 - He asked for additional details of the AMC.
 - He told Aviva to put a block on the Drawdown Account so that no further transactions could take place without his authority.
36. On 2 October 2020, Aviva emailed Mr G with the following points:-
- The £19.14 deduction was in respect of a part month AMC which became due when the Account closed, and assets were transferred to the Drawdown Account.

- Aviva always sold an extra 2.5% of units when selling funds to pay for a PCLS. This was to allow for any increase in unit prices during the two-day settlement period. This was described in section 6.8.8 of its terms and conditions (**the T&Cs**), which had been enclosed with Mr G's pension illustrations. The T&Cs said that Aviva could not accept liability for any loss for being out of market while transactions took place.
 - As the fund value on Aviva's platform updated two working days after the market, the 7 July 2020 transaction used unit prices for that day, but the total fund value was two days out of date. So, on 7 July 2020, Aviva sold 27.5% of £239,926.95, thus generating proceeds of £65,979.91.
 - On 9 July 2020, the total fund value was updated on the platform for 7 July 2020. As the PCLS amount on 7 July 2020 was calculated to be £59,579.84, after £19.14 was deducted for the AMC, £6,380.93 was reinvested in the Equity Fund on 10 July 2020.
 - Nationwide told Aviva on 12 August 2020 that two of Mr G's employer contributions in 2019 had been incorrectly submitted as employee contributions by Nationwide. These contributions had already received tax relief at source, but as Aviva believed they were employee contributions, it automatically added further tax relief to the contributions. The additional tax relief was £1,571.16 and £9,178.75.
 - Nationwide asked Aviva to correct the contribution amounts and pay the additional tax relief back to HMRC. On 11 September 2020, Aviva sold units in the Equity Fund, generating proceeds of £9,178.75. This did not take into account investment returns from when the additional £9,178.75 tax relief had been invested. The sale of units to reimburse tax relief on the smaller contribution was carried out on 28 September 2020, and was for £1,661.66. This did take into account investment returns from when the additional £1,571.16 tax relief had been invested.
 - Due to the service issues Mr G had experienced, he should be allowed to retain the investment returns from the additional tax relief for the smaller contribution. Aviva had corrected this by purchasing 57.74 units in the Equity Fund. Mr G had already received investment returns equating to 57.2347 units in the Equity Fund from the additional tax relief for the larger contribution.
 - While it had assumed that Nationwide had informed members of the contribution error, Aviva should have notified him of the subsequent transactions.
37. On 6 October 2020, Aviva emailed Mr G and asked for confirmation that he had received its 2 October 2020 email.

38. On 7 October 2020, Mr G emailed Aviva and Nationwide with the following points:-

- While he did not understand the reason for Aviva's process for paying his PCLS, he accepted that it was covered in the T&Cs. However, he wanted to know why Aviva had taken so long to clarify the position with him. He had telephoned and emailed Aviva on a number of occasions and representatives had not been able to explain the process to him.
- As he held 89,742.64 units in the Equity Fund before the 7 July 2020 transaction, he had expected to retain 75% x 89,742.64 units, minus £19.14 for the AMC, after he had withdrawn his PCLS. However, after the sell and buy transactions, he retained 67,297.7816, so he was "missing" 9.1984 units.
- Nationwide had told him that the 11 and 25 September 2020 transactions had been made incorrectly.
- Part of his redundancy payment had been paid as a contribution to the Account. Taking into account the incorrect additional tax relief, he believed that he had exceeded the annual allowance (**AL**) for the tax year 2019/2020, potentially resulting in tax implications.
- As the incorrect additional tax relief was not corrected until September 2020, the PCLS he withdrew in July 2020 had been overstated, potentially resulting in further tax implications.
- Nationwide had told him that it had agreed that Aviva would notify him of the tax relief error. It also told him that it had notified Aviva of the error in June 2020, so before he withdrew his PCLS.
- He was extremely angry at the distress and anxiety caused to him, and the issues had taken up a significant amount of his time. He thought that the transactions carried out without his authority were possibly illegal.

39. On 13 October 2020, Aviva emailed Mr G with the following points:-

- It apologised for chasing him for a response in its previous email.
- With regards to the "missing" 9.1984 units, on 7 July 2020, it sold 27.5% of the total fund value on 3 July 2020, which was £239,926.95, so the proceeds were £65,979.91.
- The tax refunds on the two contributions had been paid to HMRC, and Aviva would notify HMRC of the correct contributions and issue an updated Pensions Savings Statement (**PSS**). It said that he would be notified when this had been completed.

- Prior to instructing the 11 and 25 September 2020 transactions, it obtained internal advice confirming that as the PCLS had been withdrawn after Aviva had been notified of the error, the excess PCLS payment would be treated as an authorised payment.
- It accepted that it had been notified of the error with the smaller contribution in June 2020, but it was not informed about the larger contribution until August 2020. So, only the overpayment of the PCLS relating to the smaller contribution should be treated as an unauthorised payment. It agreed that it would pay the unauthorised payment charge and notify HMRC of the position.
- It accepted that it had failed to respond to his queries or provide updates promptly and had not been able to answer relatively simple questions during telephone calls. It had also failed to respond to his complaint adequately and had not telephoned him back on several occasions.
- It agreed to pay Mr G £500 for the errors and delays it had caused.

40. On 14 October 2020, Mr G emailed Aviva with the following points:-

- He asked for copies of correspondence between Aviva and HMRC about the overpayments and Aviva's payment of the unauthorised payment charge. He also asked for a copy of the internal advice Aviva had obtained confirming that the excess PCLS in respect of the larger contribution would be treated as an authorised payment.
- He would consider Aviva's offer of £500 in the context that he was paying fees to Aviva amounting to £1,000 per annum.

41. Later the same day, Aviva acknowledged Mr G's email and said that it would discuss his requests with its tax team the following week.

42. On 2 November 2020, Mr G emailed Aviva and asked for an update on his requests. He said that he had a self-assessment tax return to complete and was waiting for Aviva's response.

43. On 6 November 2020, Aviva emailed Mr G and said that it had not yet received a reply internally.

44. On 17 November 2020, Mr G emailed Aviva and asked for an update on his requests. He said that he had received a reminder to complete his self-assessment tax return.

45. On 30 November 2020, Mr G emailed the CEO and complained that he had not received a response to his requests. Later the same day, Aviva acknowledged Mr G's email and said that his requests would be dealt with by a Business Manager.

46. On 8 January 2021, Aviva sent Mr G a pension illustration, which stated that the current value of the Drawdown Account was £192,304.60.

47. On 11 January 2021, Aviva sent Mr G a cash equivalent transfer value illustration and transfer discharge form. The current value of the Drawdown Account was £194,492.55.
48. On 3 February 2021, Aviva sold Mr G's entire holding in the Equity Fund in the Drawdown Account in two transactions (**the 3 February 2021 transactions**). After paying the balance of an AMC, the sale proceeds were £188,242.77.
49. On 4 February 2021, Aviva sent Mr G confirmation of the 3 February 2021 transactions.
50. On 5 February 2021, Aviva sent Mr G confirmation that £189,654.51 would be transferred to Hargreaves Lansdowne in the next few days, and the Drawdown Account would be closed.
51. On 29 March 2021, Aviva's Chief Operating Officer (**the COO**) emailed Mr G with the following points:-
 - She apologised for the delay in responding to his email to the CEO.
 - Refunds for tax relief were not sent to HMRC for each individual member but electronically on a scheme level, so HMRC would not know who the refunds were in respect of until Aviva submitted its annual return at the end of the current tax year.
 - There was no paper correspondence with HMRC, so Aviva could not provide him with copies. However, he could treat this email as confirmation that he would not be liable for an unauthorised payment fee. If in the future there was an issue, Aviva would assess this again and make the payment on his behalf.
 - Aviva did not intend to provide him with a copy of the internal advice in respect of authorised payments.
 - An updated PSS was enclosed.
 - Mr G was offered a further £250.
52. Following the complaint being referred to TPO. Mr G and Aviva made further submissions that have been summarised below.
53. Mr G's further submissions:-
 - At the time of the 11 and 25 September 2020 transactions, he believed that his life savings were being stolen.
 - As Aviva's actions had complicated his tax situation, he had needed to seek advice and complete a self-assessment tax return for the year 2019/2020. He was told by his adviser that HMRC may investigate his tax position further.

- He had found his dealings with Aviva over many months extremely distressing, and he suspected that it had been detrimental to his health. He did not believe that Aviva had at any stage understood how upsetting the matter had been to him, and he was not confident that it would provide a fair and equitable resolution to his complaint.
- While he had received the £500 payment from Aviva, he did not accept the offer of an additional £250.

54. Aviva's further submissions:-

- The AMC was calculated at a scheme level rather than member level, so it was not possible to remove or suspend the charge.
- It appreciated the extreme upset and anxiety it had caused Mr G and offered to increase his award from £750 to £1,000.

55. Mr G did not accept the increased award.

Adjudicator's Opinion

56. Mr G's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-

- On 7 July 2020, Aviva sold 27.5% of the Equity Fund to allow Mr G to withdraw 25% of the value of the Account as his PCLS. Aviva's standard process as set out in the T&Cs was to sell an additional 2.5% of a member's funds and reinvest any remaining balance at a later date. So, in respect of Mr G withdrawing his PCLS, Aviva followed its standard process set out in the T&Cs.
- On the date that the Account was crystallised, 7 July 2020, after allowing for the £19.14 payment for the AMC, the Account's value was £238,319.36. The PCLS was calculated as 25% of this value, resulting in an amount of £59,579.84. Aviva sold units in the Equity Fund on 7 July 2020 to provide proceeds of £65,979.91. After deducting £19.14 for the AMC and £59,579.84 for the PCLS, the balance of £6,380.93 (**the Balance**) was reinvested in the Equity Fund on 10 July 2020. As the unit price of the Equity Fund between 7 and 10 July 2020 increased from £2.6558 to £2.6600, the number of units purchased with the Balance on 10 July 2020 was less than the equivalent number that were sold on 7 July 2020.

- Nationwide incorrectly allocated the employer contributions as Mr G's employee contributions, so Aviva automatically added further tax relief of £1,571.16 and £9,178.75. Nationwide informed Aviva of the first contribution error in June 2020, and the second contribution error in August 2020. Aviva then corrected the errors by selling units in the Equity Fund on 11 and 25 September 2020, but did not explain to Mr G the reasons for the two transactions. As he was worried that the transactions were fraudulent, he contacted Aviva for an explanation on a number of occasions by telephone and email during the period 17 to 30 September 2020. He was told during one telephone call that the first transaction was required due to a tax overpayment. On 2 October 2020, Aviva emailed Mr G with a more detailed explanation.
- Nationwide told Mr G that it had agreed that Aviva would notify members of the tax errors, while Aviva has said that it assumed Nationwide had informed members. Nevertheless, Aviva has accepted that it should have notified Mr G of the transactions. So, while the initial error was not caused by Aviva, it should have notified Mr G either before the transactions were carried out or when it sent him the transaction statements. This amounted to maladministration.
- While Mr G's PCLS calculation included the two additional tax relief amounts, the Adjudicator accepted that Aviva confirmed that it had paid Mr G's additional tax liability, and he would not be liable for any further tax. The Adjudicator concluded that Mr G should keep a copy of the COO's email in case HMRC queried this in the future. However, the Adjudicator appreciated that as Mr G had been required to complete a self-assessment tax return during this period, the additional complexity resulting from the PCLS overpayment required Mr G to seek professional advice on the matter.
- Aviva also accepted that it did not respond to some of Mr G's queries and complaints or provide him with updates promptly. It also agreed that it did not answer relatively straightforward questions during telephone calls and failed to telephone Mr G back on several occasions. In the Adjudicator's view, Aviva did not respond to Mr G's information requests within reasonable time periods. For example, Mr G queried the PCLS transactions on 22 July 2020, but Aviva did not provide him with a detailed explanation until 2 October 2020. This amounted to maladministration.
- Mr G wanted the fees he paid to Aviva since June 2020 reimbursed to him. While the Adjudicator appreciated that Mr G had not been satisfied with the level of service he received from Aviva during this period, it did continue to provide him with the day-to-day services expected from a defined contribution occupational pension scheme. So, Aviva should not be required to repay Mr G's fees.

- Mr G also wanted to receive an award for the distress and emotional anxiety he suffered, and the amount of time he spent dealing with Aviva. While the Adjudicator appreciated Mr G's point of view, it was not the role of the Pensions Ombudsman (**the PO**) to make an award for reimbursement of an applicant's time or other indirectly incurred costs. But the PO could make an award for non-financial injustice suffered as a result of maladministration, such as distress and inconvenience. The Adjudicator understood that Mr G's dealings with Aviva may have caused him to suffer distress, and Aviva recognised this by paying him £500 and offering him a further £500, which he did not accept. However, an award of £1,000 was in line with the PO's guidance for serious non-financial injustice.

57. Mr G did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr G provided his further comments, which are summarised below:

- Despite numerous telephone calls and emails, Aviva had not been able to provide him with an explanation about the two unauthorised transactions.
- He did not feel that Aviva's offer of £1,000 reflected the extreme distress, anxiety, and terror that the situation had caused him when he thought his pension savings were being fraudulently withdrawn. He believed that the level of his distress would have been apparent during his telephone conversations with Aviva.
- He disagreed that Aviva had continued to provide him with the day-to-day services expected from a defined contribution occupational pension scheme. While Aviva's customer literature extolled the virtues of its customer service, on numerous occasions it had failed to meet adequate service levels.

58. I have considered Mr G's comments, but they do not change the outcome; I agree with the Adjudicator's Opinion.

Ombudsman's decision

59. I empathise with Mr G's position and note the additional comments he has made. Aviva was slow to respond to some of his information requests, and I appreciate that Mr G would have been particularly worried when he received the sell statements for the 11 and 25 September 2020 transactions. Aviva should have notified Mr G of those transactions proactively, detailing the reasons for them, and ideally before the transactions were made.

60. However, although I agree that Aviva's actions amounted to maladministration, in order for me to determine an award higher than £1,000 for the distress and inconvenience he suffered, I would need to see evidence that errors were 'severe' - for example, compounded over a prolonged period, they were a serious detriment to his health, or they prevented him from making informed life decisions. Those circumstances are not apparent in this case. Rather, in my view, the distress and inconvenience suffered by Mr G falls into the 'serious' category – and so the offer of £1,000, in total, already made by Aviva fits with the award that I would have made.

CAS-65911-J7P3

Therefore, if Mr G wishes to accept the additional £500 award offered by Aviva, he should contact Aviva directly to do so.

61. I also appreciate that Aviva's level of service was unsatisfactory on a number of occasions. However, it would be unreasonable for me to determine that Aviva should refund Mr G's fees while it continued the operation and maintenance of the GPP and to which Mr G agreed when the arrangement was set up.
62. I do not uphold Mr G's complaint.

Dominic Harris

Pensions Ombudsman
14 June 2024