CAS-53852-B5F7

Ombudsman's Determination

Applicant	Mr A
Scheme	Aviva Income Drawdown Plan (**the Plan**)
Respondent	Aviva Life & Pensions UK Limited (**Aviva**)

Outcome

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

Complaint summary

2. Prior to his decision to close the Plan, the entirety of Mr A's funds had been held in cash. He chose to receive the full value of £74,923.49 as a lump sum payment in the tax year 2019/20. He has complained that this resulted in him being liable for higher rate income tax.

3. Mr A said that Aviva's failure to include a tax breakdown with the quotation provided for his income payment, led him to a decision that was not in his best financial interest. Had he been aware that he would be liable for higher rate income tax, he would not have chosen to receive the payment in this way.

Background information, including submissions from the parties and timeline of events

4. Mr A held two telephone conversations (**Call one** and **Call two**) with Aviva, in which he outlined his intention to draw the full amount in the Plan as a lump sum payment. A summary of the main points that were discussed, specifically in relation to the payment and the complaint raised by Mr A, is shown in the Appendix.

5. Call one took place on 19 March 2020, after Mr A had been transferred to the Aviva Retirement Team. He set out his query about the process for taking his intended income payment.

6. Following Call one, Aviva emailed a quotation to Mr A, dated 19 March 2020, which set out details of the payment. The cash value was confirmed as £74,923.49 and it stated that the Plan would be closed if the funds were paid in full. Aviva strongly recommended that Mr A seek financial advice to inform his decision.

7. The correspondence of 19 March 2020 included an instruction form for Mr A to complete if he wished to proceed. It explained that once taken, the payment could not be returned, and tax would be deducted in line with HMRC requirements. The correspondence did not include a tax breakdown. Mr A completed and returned the instruction form the same day.

8. Call two took place on the afternoon of 19 March 2020. Mr A had by this point made the decision to withdraw his funds in full and returned the instruction form. The purpose of the call was to confirm his bank account details and complete the payment administration.

9. On 1 April 2020, Mr A emailed Aviva to query the tax amount that had been deducted as part of his lump sum income payment. He said that he had never been a higher rate taxpayer. He calculated that he was £8,896.70 worse off, as a result of what he termed an ‘overpayment’ of his income.

10. On 4 April 2020, Mr A emailed Aviva to set out that it was always his intention to remain in the basic rate tax band. He could not account for the omission of the tax breakdown with his payment quotation, but believed it was a genuine error. He said that as soon as he realised it had not been included, he raised the matter with Aviva.

11. On 6 April 2020, Mr A emailed Aviva to explain his understanding of the discussions of 19 March 2020 was that his quotation would include a tax breakdown. Mr A said he confirmed to Aviva that he was a basic rate taxpayer and did not expect to go into the higher band. He felt this was an error on the part of Aviva and asked it to rectify the situation with HMRC.

12. On 15 April 2020, Aviva sent Mr A confirmation that a payment of £42,933.02 had been made to his bank account and the Plan had been closed. The remainder of his funds had been paid to HRMC. The correspondence included a tax breakdown and confirmation of the emergency tax code used to determine the amount sent to HMRC. Mr A was advised to contact HMRC if he thought he had paid too much tax.

13. On 21 April 2020, Mr A emailed Aviva to request recordings of the telephone calls held on 19 March 2020, and a further call which took place on 30 March 2020.

14. On 22 April 2020, Mr A emailed Aviva to register his complaint and a response was sent the same day.

Mr A’s position

15. Aviva had stated categorically that it would provide a tax breakdown with the income payment quotation. He had suffered a loss because of Aviva’s maladministration. He believed it was a genuine error that was rectifiable.

16. He had made Aviva aware of his intention that the payment should fall within the basic rate tax band. Aviva failed to alert him to the higher rate deductions by its omission of the tax breakdown.

17. He only realised he had been pushed into the higher rate tax band when he received the tax breakdown from Aviva, which was after the payment had been made.

18. He contacted HMRC but was told he would need to resolve the matter with Aviva. He would like the income payment to be considered as a genuine error and reversed. His intention would then be to split the payment across two tax years, which he calculated would reduce his tax liability by £8,896.70.

Aviva's position

19. It was explained during Call one on 19 March 2020 that Mr A's payment would be taxable and he would be placed on the emergency tax code. His final tax liability could then be higher or lower, depending on his circumstances.

20. Mr A had asked for clarification on the emergency tax code and was told it is applied on a sliding scale, with tax levied at different rates.

21. It apologised that he was told a tax breakdown would be sent to him with the payment quotation. This was not part of its normal process.

22. It was satisfied that he was told during the discussions that the payment would incur some tax at the 40% rate.

23. It confirmed that it was unable to reinstate part of the payment to the Plan unless HRMC agreed.

24. The Financial Conduct Authority's (**FCA**) Handbook (**the Handbook**), section COBS 19.7, states that appropriate risk warnings must be given to a client looking to withdraw their pension as a lump sum payment. Section 19.7.9 states that the firm needs to identify whether any risk factors are present. Section 19.7.12 lists potential risk factors, which include the tax implications. Section 19.7.16 states that the relevant warnings for the client should be highlighted clearly and prominently. The Handbook does not set out a prescribed method, or wording, for communication of the risk warnings.

Adjudicator's Opinion

25. Mr A's complaint was considered by one of our Adjudicators, who concluded that no further action was required by Aviva. A summary of the Adjudicator's findings is shown in paragraphs 26 – 29 below.

26. The Adjudicator noted that although it was not Aviva's standard practice to provide a tax breakdown with an income payment quotation, it did say during Call One that a breakdown would be sent to Mr A. The Adjudicator agreed that this was incorrect information but did not consider it to be maladministration on the part of Aviva.

27. The Adjudicator’s opinion was that Aviva was responsible for providing appropriate risk warnings to Mr A, in line with the FCA’s guidance. It was not able to advise him on his tax affairs. Aviva’s statements, during the telephone conversations with Mr A, were sufficient to have fulfilled the requirement to provide appropriate risk warnings.

28. The application of the emergency tax code, and the potential for income tax above the basic rate, was highlighted to Mr A. It was not required that Aviva provide a tax breakdown with the payment quotation.

29. Mr A did not accept the Adjudicator’s Opinion and the complaint was passed to me to consider. Mr A provided some additional comments, which are summarised below:-

- He felt the response from the Aviva representative dealing with his telephone call was less than coherent. The original information from Aviva was incomplete and vital to appreciate the position at the time of drawdown. He was disadvantaged without the tax breakdown information mentioned in the original telephone call.

- It was an unprecedented and stressful time at the peak of the pandemic outbreak, compounded by the restrictions placed upon personal contact, movement and accessibility to facilities, close to the end of the tax year.

- He believed he did his utmost to clarify his original intention with Aviva on the day, by expressing his aim to apportion his drawdown income within the basic rate threshold. He does not think he was given adequate warning that the payment could involve higher rate tax. The threshold amounts are clearly stated in the tax breakdown that followed from Aviva, which informed him in a way that would certainly have altered his drawdown.

- Immediately on receipt of the amount to his bank account, he realised that the basic rate threshold needed to be promptly confirmed in conjunction with the drawdown amount. He was disappointed to have exceeded the basic rate threshold and immediately appealed to Aviva to rectify or redress.

- He understands it would constitute a minor change under the guidelines he discussed with HMRC, subject to the cooperation of Aviva to move him to his intended position. HMRC told him that they would not object to the amendment, providing Aviva is willing to accept the oversight and rectify the matter.

30. I have considered these points, but they do not change the outcome. I agree with the Adjudicator’s Opinion.

Ombudsman's decision

31. Aviva was incorrect in stating to Mr A that a tax breakdown would be provided with his income payment quotation. Although it would have been preferable for Aviva to have given accurate information, this action does not amount to maladministration. Upon receipt of the quotation, Mr A did not make a request for the tax breakdown to be sent to him and chose to proceed with the payment.

32. I acknowledge that the period around March 2020 was an unusually challenging time. However, I have seen no evidence of actions undertaken in relation to this matter that could be said to have been affected by the circumstances of the pandemic. The recordings of Call one and Call two demonstrate that Mr A was keen to press ahead with the payment and it was then made within his desired timescale.

33. While Mr A may have wished to remain in the basic rate tax band, it is important to highlight Aviva's responsibilities for this process. It was required, as per the guidance in the Handbook, to give the appropriate risk warnings for the requested payment. It was not in a position to have advised Mr A that his payment may have been more tax-efficient, if taken over multiple years. It was Mr A's responsibility to manage his tax affairs and Aviva did recommend that he take advice before proceeding with the payment. Mr A directed Aviva to make the payment as one lump sum and Aviva applied the tax deduction, as required by HRMC.

34. Mr A said he was not given adequate warning that the payment might involve higher rate tax. I refer to the recording of Call one, from around 19 minutes onwards, where there was a discussion of the application of the emergency tax code. As part of this discussion, Aviva explained that some of the payment will be taxed at 20%, some at 40%, and potentially some at 45%. If Mr A believed he had been overtaxed, he could subsequently claim this back from HRMC. I consider sufficient warning was given to Mr A of the potential tax implications of his payment.

35. I acknowledge that Mr A has discussed the matter with HMRC and it is open to him to ask Aviva again if it is willing to agree to his request to reverse the payment.

36. In conclusion, I do not uphold Mr A's complaint.

Anthony Arter

Pensions Ombudsman
31 October 2022

Appendix

Call one:	
Time within call	***Summary of discussion***
Around 2:18	Aviva said its process for administering the income payment involved sending out a quote, which would include a ‘tax breakdown’.
Around 2:57	Mr A confirmed he had already taken his entire tax-free allowance from the Plan, but had not taken any taxable income as yet.
Around 3:23	Aviva said it would take around three to four days to generate the quote. Mr A said he did not need this, because his fund was in cash. Aviva explained that as part of its process, it had to issue a quote if a payment was being drawn. Mr A requested it be provided that day, as he wanted to proceed as quickly as possible. Aviva said it would try to expedite the quote.
Around 4:42	Mr A asked what forms he would need to complete to facilitate the payment and for them to be sent to him. Aviva said they would be included with the quote to be issued to him. Mr A asked to speak to a supervisor to arrange for it be issued within a timeframe he felt was acceptable.
Around 8:14	Following some time on hold, the supervisor took over the call. Mr A explained his situation and requested he be paid the full cash amount in the Plan with immediate effect.
Around 9:29	Aviva said it can take Mr A’s instruction by telephone, but would then need him to complete the appropriate paperwork. Mr A accepted this, but said he did not want a delay that would be detrimental to his interests. Aviva explained that because the payment is fully taxable, the quote must be produced manually, and this could take up to three working days. Mr A would need to provide his signed declaration to proceed with the payment.
Around 11:02	Mr A said that now he has taken his tax-free payment and is in drawdown, he did not expect to need another quote before receiving payment of the remaining funds. If possible, he wished to sign and return the forms that day.

Around 11:27	Aviva agreed that it would try to get the quote to Mr A within 24 hours. Mr A repeated that he did not want a delay and he would complete the forms as soon as possible. He had hoped to complete the transaction by telephone that day, but was willing to wait 24 hours. Aviva confirmed that once the forms were returned, his payment would be made within 10 working days.
Around 16:20	Aviva said it would need to go through some further information with Mr A, in relation to making the taxable payment. The call was transferred from the supervisor back to the previous agent.
Around 17:26	Mr A reiterated that he wanted to draw the full cash amount from the Plan.
Around 18:11	Aviva set out that it could not give advice to Mr A in relation to his chosen course of action. Aviva confirmed the Plan would close if the full amount was taken.
Around 19:02	Aviva explained the payment would be taxed as income under the emergency tax code. It would be added to any other income Mr A had received within that tax year. He may then have to pay additional tax, or be able to reclaim some from HRMC, depending on his circumstances. Mr A said he understood what had just been explained to him regarding the tax implications.
Around 21:41	Mr A asked for clarification on the emergency tax code. Aviva said it works on a sliding scale; some of the payment will be taxed at 20%, some at 40%, and potentially some at 45%. The figures would be set out in the tax breakdown to be provided with the quote. Depending on his circumstances, Mr A may have to pay more tax, or be able to claim some back.
Around 22:16	Mr A asked if Aviva could give him the emergency tax code to be used. It was unable to provide the tax code during the call and said that it would be shown on his documentation.
Around 23:11	Aviva asked Mr A if he understood that he may not be able to alter his decision once the payment had been made. Mr A said he was happy with the information given and he had already decided what he wanted to do.
Around 24:55	Aviva said that if Mr A wished to use an alternative bank account to receive payment, it would need to run additional verification. This could be carried out by telephone, but Mr A indicated he would provide the information electronically. Aviva said he could input his account details on the payment form, to be returned following receipt of the quote.

Call two:	
Time within call	***Summary of discussion***
Around 2:12	Mr A said he had been led to believe that further verification of his bank account would be required, but no such form had been included with his quote. Aviva apologised and said this was not required for the type of payment request he had made.
Around 3:10	Mr A said he had taken the tax-free lump sum from the Plan last year. He understood that the remaining amount to be paid was taxable. He wished for this payment to be paid into a different bank account to the one used for his tax-free lump sum. Aviva said this was possible and proceeded to confirm the relevant account details. The payment would be made within 10 working days.
Around 7:02	Mr A confirmed he wanted the payment to be made within the 2019/20 tax year and that is why he returned the instruction form straight away. Aviva said the effective date of the payment would be that day, so HMRC would treat it as within the current tax year.
Around 9:08	Mr A set out that he was aware the payment would be subject to the emergency tax code, but no other withdrawals had been made that tax year. He said that perhaps he could have arranged the payment earlier in the year to have avoided the emergency code being applied.
Around 9:30	Mr A said he was a basic rate taxpayer and he had discussed with HRMC and Aviva about what should be his correct tax code. He understood from HMRC that he would be on the basic rate, but Aviva now wished to apply the emergency tax code. He would need to claim back any tax he may have overpaid. He was aware that being on the emergency code would involve tax being deducted above the basic rate.
Around 10:34	Mr A said he hoped his payment could be made under the basic rate of tax. Aviva said that as this was his first withdrawal in the tax year, it would be under the emergency code. Any subsequent withdrawal would use the appropriate tax code, as applied by HMRC.

Around 10:53	Mr A set out his belief that the tax code to be used by HMRC would not put him in a higher rate tax band. He was not sure why Aviva would apply the emergency tax code, but felt it was too late to try to change this.
Around 11:51	Aviva said it applies the tax code, in this case the emergency code, at the direction of HMRC. It was uncertain why HMRC would suggest that the basic rate was appropriate and considered it was correct that the emergency tax code be applied for Mr A's payment.
Around 12:25	Mr A said he had another pension for which he had previously made a similar income withdrawal. He received a P45 for this payment and the basic rate of tax had been applied. Aviva said this may have been because the value of the payment was different, but it could not comment further without the full details.
Around 13:17	Mr A asked if Aviva had all the necessary information to complete his requested payment. Aviva confirmed it did and its next contact with him would be once the payment had been made to his account. The appropriate documentation, including a P45, would be issued to him at that time.
Around 14:04	Mr A said he had no calculations to show what tax will be deducted from his payment. He would leave this matter to Aviva to clarify. Aviva confirmed these figures would be included in the documents to be issued upon completion of his payment. Mr A said this was fine and he could cross-check the figures when he received them.