DRN-3354728

The complaint

Mr and Mrs S complain that Aviva Life & Pensions UK Limited has made several errors on their retirement and investment accounts causing them distress and inconvenience.

Mr S is representing both himself and Mrs S who has separate accounts from Mr S. Any reference to Mr S will include information provided on behalf of Mrs S.

What happened

Mr and Mrs S had several accounts with Aviva including their respective Self Invested Personal Pension accounts ('SIPPs'). Mr and Mrs S's SIPPs were split into pre-retirement and post-retirement accounts.

On 27 March 2018 Aviva issued a final response letter to Mr S in response to errors Mr S had identified. Aviva also paid Mr S compensation to cover fees for a move to another platform. Mr S didn't like changes that had been made to the Aviva platform. And he and Mrs S didn't want to use Aviva's workaround to resolve the issues. So, Aviva offered to cover the cost of Mr and Mrs S moving their funds held in their respective pre-retirement accounts. In its final response letter it offered Mr and Mrs S the following in compensation:

- £1,000 total payment for distress and inconvenience. This was related to errors that Mr S had identified on his and Mrs S's accounts up until March 2018.
- £5,211 – this payment was to compensate Mrs and Mr S for fees they'd incur using a new provider.
- Mrs and Mr S were refunded a total of £86.88 paid for incorrect charges.

Shortly after this Mr S said he had identified at least 24 new errors to do with the valuations of his investments. He said he wanted further compensation for these errors. However, Aviva said it had already paid S £5,211 for Mr and Mrs S to move to a new provider to cover costs for doing so but ultimately, they (Mr and Mrs S) hadn't moved their respective accounts. So, Aviva said that it would not pay any further compensation for the errors Mr S referred to. However, it later said it would pay Mr and Mrs S a further £1,000 once they moved to a different provider.

Mr S declined this offer. He said he shouldn't have to wait for the payment and that he wanted to be paid for the time and effort he'd spent on putting things right.

Our investigator thought that Aviva should pay the £1,000 even if Mr and Mrs S didn't move to a different provider.

I issued a provisional decision on 14 January 2022. In summary I said that Aviva's offer was fair and reasonable for the following reasons:

- Whilst Mr S says he only accepted the March 2018 compensation, to cover for matters up to that point – the payment of £5,211 was made to cover the extra costs he and Mrs S would have incurred by moving to a new provider. As he and Mrs S's

accounts weren't moved after receiving this payment, I consider it fair and reasonable that it is taken into account for the purposes of this decision.

- As Aviva has said, it could have taken action to recover these funds but it waived this right on the basis that it would cover the further issues Mr S had identified.

- I know Mr S has said the reason he didn't move was because of further errors by Aviva. But I can't see that the errors he identified after the March 2018 final response letter, prevented him and Mrs S from moving their accounts to another platform.

- Mr S says the impact of the errors was that it made it difficult for him to establish whether he would go over his Lifetime Allowance ('LTA'). But as he acknowledged himself, if Aviva's errors had caused him to have a higher tax bill this is something he could have complained about and received proper compensation on the basis of *actual* loss.

- Also as Mr S was doing his own valuations, which he says were correct, he did have information which enabled him to decide whether crystallising his pension was something he wanted to do. In the end Mr S did do this and has now used 99.5% of his LTA, so I don't think any inaccuracies in the valuations for his investments prevented him from making an informed choice, which included the choice to move to a new provider.

- Mr S says he wants to be compensated for any fees or charges whilst he and Mrs S have been '*held captive'* on the Aviva platform. But I can't fairly say that Aviva has prevented either party from moving their respective accounts.

- Mr S hasn't provided any evidence of financial loss, so I don't think it would be fair or reasonable to make an award on the basis of potential loss which may never have happened.

- Whilst I understand Mr S's position and the work he may have put into working out the values on his and Mrs S's respective accounts, I'm not persuaded he was 'forced' by Aviva to do this amount of work. In any event, even if I were to accept the valuations were incorrect, I think the £5,211 already paid to and accepted by Mr and Mrs S, is more than I would've awarded for the time and effort put into checking the valuations. In addition, Aviva has offered a further £1,000 once Mr and Mrs S accounts are moved to a new provider.

- Mr S says Aviva's offer to only pay another £1,000 once he and Mrs S move their respective SIPPs to a new provider, is against the Financial Conduct Authority's ('FCA') regulations. But even if this were the case, which I have no evidence to support, I think it is a fair offer. Mr S should note that whilst I need to take into account relevant laws, regulations and industry best practice, I'm not bound by these. My decision is based on what I think is fair and reasonable in all the circumstances. It is for Mr S on behalf of himself and Mrs S, to decide whether Aviva's further offer of compensation, is something they wish to accept.

In summary, Mr S made the following points in response to my provisional decision:

- The £5,211 he received from Aviva was based on him moving the 'pre-retirement' accounts only because Aviva's platform could no longer handle the transactions that the old platform could do. He said to move the whole portfolio would cost around

£15,000. He said he never agreed to move the investment accounts or post-retirement accounts away from Aviva.
- The Ombudsman has confused this payment with a payment for distress and inconvenience.
- The £1,000 Aviva agreed to pay if he and Mrs S moved their post-retirement accounts away is incorrect because it was never agreed to move these away.
- He didn't agree he could move away from the Aviva platform which was confirmed in an email from Aviva dated 14 May 2019 which said: *'However, we also acknowledge that the reason you were unable to transfer was due to an Aviva system error and that you have experienced additional problems on our platform".*
- He shouldn't have to rely on his own calculations as a retail client.
- He thought the inaccuracies meant he could have breached his LTA so he didn't want to change platforms because of this.
- He did think he was forced to do his own calculations because he couldn't rely on Aviva's data.
- He found it offensive that the Ombudsman said: *"even if I were to accept the valuation were incorrect,"* as he said there were, in fact, incorrect valuations.
- He would expect our service to follow the law and regulations.
- He thought the point made by the Ombudsman about claiming for a higher tax bill was flawed.

Aviva also clarified some matters. They initially didn't think Mrs S's accounts were included in the complaint but has now accepted that her complaint is part of this matter. It also provided statements for both Mr and Mrs S's accounts. These showed all but the post-retirement accounts had funds remaining. It also clarified its position on the compensation it offered. It said that the payment will only be made if Mr and Mrs S move their respective post-retirement accounts away from its platform as these accounts are the only accounts remaining. It thinks the £5,211 should be included in its offer as it wasn't used for its intended purpose by Mr and Mrs S.

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 thank both parties for the further information they have provided. But having re-considered everything, on the face of the evidence and on balance I think the offer made by Aviva is fair and reasonable and I won't be asking it to do anything further. In addition to what I've said above, my reasons for my decision are set out below.

Before I explain my findings, I think it's important to make clear that while I accept Mr S may want answers to every question he's asked, I'm not required to provide answers to everything. No discourtesy is intended by this. It just reflects the informal nature of our service. I will instead focus my decision on what I think are the key issues. Further, where there's a dispute about what happened, I've based my decision on what I consider is most likely to have happened in the light of the evidence.

In terms of what accounts were agreed to be moved away for which £5,211 was paid to Mr and Mrs S, I'm satisfied this did relate to the pre-retirements accounts. This was made because Mr S didn't think the workaround Aviva had to use to move his investments to his post-retirement account, was something he and Mrs S wanted to be subject to. So, he wanted to move their accounts to a new platform which could perform as Aviva once did. Mr S calculated the costs of moving the pre-retirement accounts to another provider as totalling £5,211 for both his and Mrs S's accounts. This payment was made but because Mr

and Mrs S noticed more errors they didn't move their accounts.

So, I understand that at the time the offer was made, Mr and Mrs S wanted to move their pre-retirement accounts so they didn't have to use Aviva's workaround. But regardless of what accounts the payment of £5,211 related to, the fact is Mr and Mrs S's pre-retirement accounts were not moved in line with the offer made in the March 2018 final response letter.

Both pre-retirement accounts are no longer in use as they have zero balances. But I don't think the evidence supports that this was because Mr and Mrs S moved their pre-retirement accounts to another platform and/ or incurred the fees for which they were paid compensation. In fact, Mr S says he and Mrs S didn't move accounts due to the continued errors made by Aviva and that this has been admitted by Aviva in its email dated 14 May.

Despite what Mr S says, I don't think, on balance, that any of the errors in themselves, prevented either him or Mrs S from moving their respective accounts. In any event, even if the errors had prevented them from moving platforms I don't think this makes Aviva's current offer unfair.

I know Mr S has said he and Mrs S's accounts have all now been moved other than their post-retirement accounts. But Aviva has clarified that the £1,000 offer is on condition of all the 'post-retirement' accounts, which are the only accounts with remaining balances, are moved from its platform. With the background of the £5,211 payment being made and not used to cover the fees that would have been incurred if Mr and Mrs S had moved their pre-retirement accounts, I think Aviva's offer is fair and reasonable.

I make no criticism of Mr and Mrs S for not moving their accounts after receipt of the £5,211. I just think that this payment wasn't needed to cover the estimated additional fees. So, whilst it was meant to be for financial loss, I think it's fair and reasonable for Aviva to consider the payment to cover the distress and inconvenience given it wasn't used for the financial purpose for which it was paid. I think Aviva's offer of a further £1,000, which it will only pay once the remaining accounts have been transferred from its platform, is fair and reasonable. It will be for Mr and Mrs S to decide whether they wish to accept this further offer.

In terms of what I said about following laws and regulations, I do need to take these into account when reaching a determination. And I have done so. But I'm not bound to follow the law or regulations where, in my opinion, based on all the facts, it would be fair and reasonable in all the circumstances to depart from them. In this case, Aviva has made several errors for which I consider it has made a reasonable offer. I don't think this is in breach of the FCA's regulations just because it is conditional.

I appreciate the time and effort Mr S has put into reviewing his and Mrs S's accounts. And with dealing with this complaint. He has provided detailed submissions in support of his case. But I think the compensation outlined above, sufficiently covers him for this.

I'm sorry that Mr S found it offensive when I said: *"even if I were to accept the valuations were incorrect".* This certainly wasn't my intention. Mr S has provided more details of the errors he identified, which he says didn't all relate to valuations. From what I can see, the further information provided by Mr S has confirmed he and Mrs S haven't suffered financially as any charges incorrectly made have been refunded. So, whilst I accept errors have been made by Aviva, I'm satisfied the compensation offered for the distress and inconvenience caused to Mr and Mrs S, is fair and reasonable in all the circumstances.

Mr S thinks the point I made about the higher tax bill was flawed. To date, he hasn't provided any evidence of a tax liability arising as a result of the errors he identified. He has maximised his LTA. I know he says he shouldn't have to do his own figures in order to have done this.

But the point I was making in my provisional decision is that he hasn't suffered the financial loss he had concerns about. This could have potentially happened but didn't. And I think for the distress and inconvenience caused, Aviva has offered him and Mrs S fair compensation.

my final decision

My decision is that Aviva Life & Pensions UK Limited's offer to pay a further £1,000 to Mr and Mrs S for distress and inconvenience caused conditional on them transferring away from its platform, is fair and reasonable in all the circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 30 March 2022.

Yolande Mcleod
Ombudsman