

The complaint

Mr N complains that Aviva Life & Pensions UK Limited (Aviva) caused delays to the transfer of his pension policy to his Self-Invested Personal Pension (SIPP) with another provider. He complains that in calculating the financial loss they have caused him Aviva have offered insufficient compensation.

What happened

In February 2018, Mr N asked to transfer his Aviva pension policy funds to his SIPP. Aviva received the initial request on 7 February 2018.

Aviva wrote to apologise to Mr N for the delays they'd caused on 5 February 2019. They said they'd caused a slight delay between April 2018 and May 2018 when they didn't quickly seek to update their records of the Trust and Trustee addresses. They also said they'd sent a Trustee Declaration that Mr N had requested too late – he'd requested this in late November 2018 but they hadn't sent it until January 2019. Aviva offered Mr N £150 in compensation.

Mr N said he eventually received his funds on 25 March 2019. Unhappy with the length of time the transfer had taken, he complained to Aviva.

Aviva issued a further final response to the complaint on 5 April 2019. They apologised for the delays they'd caused. And agreed to arrange a financial loss assessment. They also offered increased compensation of £250 for the distress and inconvenience they'd caused Mr N. Mr N rejected Aviva's offer.

Aviva said they wrote to Mr N's adviser on 23 April 2019 to request a copy of either the contract notes or a transaction report detailing the investments made. They said they wrote again on 8 May 2019 as they hadn't received a reply. They said they couldn't assess the financial loss without this information. Aviva also wrote chaser letters on 24 May 2019 and 19 June 2019. Their June letter noted that they might have to use the date of that letter as the point they stop their loss calculation.

Mr N said his adviser wrote to Aviva giving full details of his financial loss on 9 May 2019. They had calculated this to be £46,040.

Aviva replied to Mr N's adviser to explain that they still needed copy contract notes and full details of the investments.

Mr N said Aviva wrote to him on 25 June 2019 to say that they the financial loss assessment had been closed for the time being.

On 1 July 2019 Mr N's adviser sent Aviva full details of one of Mr N's investments and some details of another investment. But Aviva said the documents didn't meet their requirements and that they'd closed their file.

Over the next few months, Mr N provided Aviva with the investment information they needed.

Aviva issued their second final response letter on 27 January 2020. They said that Mr N hadn't invested the transferred money until 28 May 2019 (£435,000), 15 May 2019 (£75,000) and 15 November 2019 (£75,000). They didn't consider it would be fair or reasonable to assess any losses on the £435,000 investment as they hadn't been provided with the investment information they'd requested. They felt the dates the monies had been invested showed that there'd been no urgency and that no action had been taken to mitigate any potential investment losses. Regarding the two £75,000 investments for which Mr N had provided the investment information they'd requested, Aviva said they couldn't assume that he would've invested in the same way if he'd received the funds earlier. And that the returns he'd demonstrated were specific to the investments he'd actually made. They also noted that the start date of those investments wouldn't have changed even if Mr N had received the transferred money earlier. Aviva told Mr N that if he had evidence that he would've invested differently had he received the transfer earlier, they could potentially review that.

Aviva said that if they hadn't caused any delays they could've transferred Mr N's pension funds on 11 January 2019. They said the transfer value would've been £584,551.17 at this time. They arranged for a payment of £1,000.61 in lieu of interest to be made to Mr N to cover the period from 11 January 2019 to 25 February 2019. Aviva said they'd already added interest of £612.00 when the initial transfer payment was made. Aviva later clarified to this service that they had based their interest calculation on the Bank of England base rate plus 1%. They said this was the standard rate they use across all interest calculation on delayed payments, regardless of whether a complaint is raised or not.

Mr N replied to Aviva on 18 February 2020. He said that the main issue to be resolved was the calculation of the financial loss. He didn't agree with Aviva that without the delays they'd caused his transfer would've completed on 11 January 2019. He also didn't agree that Aviva should disregard the financial loss on his £435,000 investment just because they hadn't received the information they'd requested in time. He said Aviva didn't reply. So he wrote to them again on 14 April 2020. He wanted the exact details of how they'd calculated the interest payment of £1,000.61 referenced in their 27 January 2020 letter. He also wanted them to explain how they intended to compensate him. And asked them what they would do about the additional costs he'd incurred with his adviser. I understand that Mr N's IFA has now agreed to waive their additional costs, so I won't consider this point further in my decision.

In June 2020 Mr N brought his complaint to this service. He felt that his loss should be calculated using a starting point of 1 April 2018. He also felt that the loss should be based on the total amount invested. Mr N also felt that the compensation Aviva had offered for distress and inconvenience was unreasonable. Over the course of the complaint, Mr N said he would reluctantly be prepared to accept that the total delay caused by Aviva's errors was six months. And that his loss should be calculated at the rate of 6.25% each year, as this was the lowest rate that he'd received on the mixture of investments he'd invested the transferred funds into.

Our investigator issued his view in July 2021. He felt the complaint should be upheld. He considered that the settlement Mr N had requested (a six-month delay, calculated at the rate of 6.25% each year) was fair and reasonable. He also felt that Aviva should pay the £250 compensation they'd offered for distress and inconvenience.

Aviva didn't agree with our investigator. They accepted that there were delays in transferring the funds. And offered to complete a loss assessment taking out the delays they'd caused. But keeping in the delays they considered had been caused by the Trustees. Aviva constructed a timeline to assess the date they considered the funds could've been transferred if they hadn't caused any delays. They said that where they'd received correspondence or a call where action needed to be taken, this should be completed within

10 working days. And when this happens and no reply is received, they said they were under no obligation to keep chasing for information. Therefore they considered that such delays weren't their responsibility. Aviva also said that it is the Trustees' obligation to keep the product provider up to date with changes in name, address and trustees. And that they couldn't be held responsible when this doesn't happen. Aviva also said that it wasn't fair of our investigator to recommend a growth rate chosen after the event. As this would give Mr N the unfair benefit of hindsight. In summary, Aviva felt that the offer they'd made in their 27 January 2020 final response was fair and correct, based on what had actually happened.

As agreement couldn't be reached, the complaint came to me for review.

I issued my provisional decision on 2 March 2022. It said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I intend to uphold it. But I don't agree with the period of delay our investigator suggested. And nor do I agree with his proposed method for putting things right. I'll explain why.

Aviva have accepted some responsibility for the delays Mr N experienced. They said that if they hadn't caused any delays, the transfer would've completed on 11 January 2019. Mr N doesn't consider that Aviva did enough to complete the transfer within a reasonable timescale. He feels that although they probably caused a longer delay, he would be prepared to accept that they caused six months of the delay. Mr N also feels that his loss should be calculated at the rate of 6.25% each year, as this is the lowest rate he said he received when he invested the transferred funds.

Although our investigator felt that Mr N's request for redress for a six-month delay was reasonable, I don't agree without carefully considering which delays Aviva should be held responsible for. So I intend to work out how much of the delay could've been avoided if Aviva had acted fairly and reasonably throughout the process.

I also don't agree with our investigator that Mr N's request for his financial loss should be calculated at the rate of 6.25% each year. Instead, I consider that it would be fairer to use one of this service's usual indexes for that calculation. This is because I agree with Aviva that without evidence that Mr N was definitively going to invest in the funds he eventually invested the transferred funds into, we can't be sure what he would've done with the funds if they'd been transferred without delay.

I'll first consider the delays Aviva caused.

Which of the delays are Aviva's responsibility?

I've looked carefully at each stage of the process so that I could assess the delays Aviva caused. I note that although I wouldn't always suggest that each individual delay in a process should be considered – in some cases they aren't material to a complaint – in this case I have looked at each and every delay to the process that I consider Aviva either caused or should've avoided. In doing this, I consider that I have reached a verifiable period of delay caused by Aviva.

Aviva's position is that although they did cause delays, the main issue related to having the correct Trustee address. They felt that this was the Trustees' responsibility to keep Aviva up to date. They also noted that some of the delay was caused by the fact that the documentation wasn't signed by all the Trustees.

Aviva said that where they received correspondence or a call where action needs to be taken, it should be completed within 10 working days. So all of the delays shown below allow for Aviva's normal turnaround time of 10 working days. Therefore, I consider that the delay calculated here is the minimum delay caused by Aviva.

The transfer request was received on 7 February 2018. It couldn't be accepted at this time as it wasn't signed by the correct authority. But Aviva only wrote to the IFA on 22 February 2018 to ask for it to be signed by the Trustees who were the policyholder. I acknowledge that Mr N has doubts that the 22 February 2018 letter was ever sent. He said it wasn't received by his IFA. And that the first letter that the IFA received was dated 27 April 2018. But I've seen no evidence that the 22 February 2018 wasn't sent. On balance of probabilities, I consider that it was sent, as it was part of Aviva's normal process.

This caused 1 working day's delay.

The Trust Deed and Transfer Form were received on 27 April 2018. This was signed by only one trustee, not the two required. Aviva said that they were taking action at this time to try to locate the correct trustees using online searches and Companies House. But they didn't request the scheme Change of Address until 17 May 2018.

This caused 3 working days' delay.

I acknowledge that Mr N feels that Aviva should've done more to get the Trustees to update their address. It took from 17 May 2018, when they first wrote to the Trustees asking them to do this, until 23 October 2018. Mr N has also questioned whether Aviva had actually had any problem corresponding with the Trustees. As he said that other people in the same arrangement had received pension certificates.

Aviva said that where they request information but receive no reply, they are under no obligation to keep chasing for information. Therefore their position is that the Trustees were responsible for this part of the delay, as they didn't respond. They also said that it was the Trustees' obligation to keep the product provider up to date with changes in name, address and trustees. And where this doesn't happen, it is not a failing on their part.

*I've carefully considered what happened over this period in order to work out if Aviva should be held responsible for any of the delay. On balance, I don't think they should. I say this because I agree that it wasn't their responsibility to ensure they held an up to date address for the Trustees. So, while I acknowledge that Aviva could've done more to get the confirmation they needed, I've no evidence that they **should've** done more here. Therefore, I'm not persuaded that it would be fair or reasonable to hold them responsible for this part of the delay.*

On 4 June 2018, Mr N's IFA called Aviva. They explained what they needed and why they needed it. Then on 3 August 2018, Mr N called Aviva. He was concerned that he'd still not received his funds. He said they didn't give him any satisfactory reason for the delay except that they'd written to someone.

Mr N called Aviva again on 15 October 2018. He said that they told him that they'd written to the employer associated with the Aviva scheme on 17 August 2018. And that they would now write again. He felt that they'd only sent that letter after his 3 August 2018 phone call. Aviva said that they wrote to the Trustees again for their change of address after Mr N's October 2018 call. They eventually received what they'd requested on 23 October 2018.

Aviva issued some follow-up documentation on 26 October 2018. But failed to include the Trustee Declaration Form. This wasn't sent until 21 January 2019.

This caused 58 working days' delay.

On 30 January 2019, Aviva received the Trustee Declaration. This was the final requirement before payment. But payment wasn't made until 21 March 2019. Mr N said that Aviva phoned him on 8 February 2019 to tell him that they'd forgotten to include all of the paperwork in the letter to the Trustees and that they would now need to write to the Trustees again. He said that they confirmed later that this paperwork was received back on 26 February 2019.

This caused 26 working days' delay.

Taking all of the delays Aviva caused together, I'm satisfied that they are responsible for 88 working days' delay, as detailed above.

When should the transfer have completed?

Aviva said that if their delays were removed from the process, they consider that the payment should've been made on 11 January 2019. The actual payment was made on 21 March 2019.

Mr N's position is that Aviva caused at least six months of delay to the process.

Based on my assessment of the delays in the previous section, I consider that Aviva caused 88 working days of delay.

Based on 88 working days of delay and the known payment date of 21 March 2019, I consider that the payment date should've been on 14 November 2018.

Therefore I believe that this date should be used for the redress calculations. And the period of redress should be approximately four months.

What has Aviva done to put things right?

Aviva have already paid interest on the amount transferred. They told this service that they'd calculated the interest using the Bank of England Base Rate +1%. They said this was the standard rate they use across all interest calculations on delayed payments regardless of whether a complaint is raised. Aviva also offered Mr N £250 compensation for the distress and inconvenience they caused him.

Aviva initially calculated the interest on the period between 26 February 2019 and 20 March 2019. This came to £612.00 which was added to the initial transfer payment. But then Aviva recalculated the interest between 11 January 2019 and 25 February 2019 as they'd missed this period from their original payment. This came to £1,000.61 and was paid out in the form of a cheque on 27 January 2020.

Mr N has asked for an explanation of how Aviva arrived at the amounts calculated. They have provided the following information to this service. I include it here as Mr N has requested it.

11/01/19: Payment would have been made if Aviva had not delayed

With regards to the interest calculations. Our calculation for the £1006.61 is as follows:

Total Premiums £584,551.17

Total Interest £1,250.76

Tax Retained £250.15

Net Interest £1,000.61

Total Refund (net) £585,551.78

This was calculated at 1% above BoE base rate, which we calculate at a total of 1.75% as an average at the time.

Having replicated the interest calculation for the £612 it is as follows:

Total Premiums £584,551.17

Total Interest £611.15

This was also calculated as 1% above base rate, which we calculated at a total of 1.75% as an average at the time. The payment was also rounded up to the nearest £1

Mr N said that he'd offered to accept a reduced delay and a reduced investment return in order to try to bring his complaint to an early conclusion.

Aviva said that their loss assessment and payments had already put Mr N back to the correct financial position had their delays not happened. They said that our investigator's proposal to use Mr N's suggested interest rate wasn't in line with this service's normal recommendation. They felt they had already put Mr N back to the same position he would've been in without their delays.

Our investigator didn't consider that Aviva had done enough to put things right. He felt that Mr N had lost out by not transferring earlier. He acknowledged that even though Mr N hadn't invested his transferred funds immediately, he would've invested earlier if he'd received the funds earlier. So he considered that Aviva should pay redress for the lost investment opportunity. He felt that the settlement Mr N had requested - based on a six-month delay, calculated at the rate of 6.25% each year - was fair and reasonable.

I've carefully considered how Aviva should put things right. I agree with our investigator that Mr N should be compensated for the lost investment return. But I don't agree that Aviva should simply take Mr N's word for what investment return he would've received. Or base the calculation on what he did receive. I say this because I can't know what investment opportunities would've been open to Mr N if he'd invested four months earlier. This is supported by Mr N's IFA which has confirmed that the returns on the type of investment Mr N chose change dependant on the investment opportunity. Instead, I consider that we should use this service's index which best reflects Mr N's investment plans. I'm satisfied that if Aviva had caused no delays, Mr N would've been able to invest the transferred funds approximately four months earlier.

Response to my provisional decision

Aviva said they felt that the timeline they originally completed to establish the loss was more appropriate in this case. They also maintained that while they accepted that the delays were caused by their lack of action, a large part of the timeframe was waiting for the Trustees to provide required information.

Aviva also said that for my recommended redress to be carried out they'd need the value of Mr N's new investment as at 21 March 2019. They said that this might lead to a Change in Outcome.

Mr N told this service that he'd given up a valuable Guaranteed Annuity Rate (GAR) when he decided to transfer out of Aviva. He said he'd wanted to create an income-driven portfolio which would provide an income approaching the guaranteed income he would've got from Aviva.

Mr N also said that I'd been incorrect to state in my provisional decision: *"I say this because I can't know what investment opportunities would've been open to Mr N if he'd invested four months earlier"*. This was because he said he was always going to invest in the specific fund in which he'd actually invested £435,000 of the transfer on 28 May 2019. And he said that fund was continuously open for investment. Therefore he felt that I should use that particular investment as the basis for calculating his loss.

Mr N also felt that this service should look at the delays as a whole. He felt that my assessment of the delays Aviva were responsible for had given Aviva the benefit of the doubt. He felt that Aviva was completely responsible for the delays between 23 October 2018 and 21 March 2019, less the 10 working days they allowed for the process. He said that this in itself was 94 working days. He also felt that Aviva should be held responsible for more of the delay before 23 October 2018 than I'd allowed for in my assessment.

Mr N told this service he doesn't currently pay tax. He said he didn't understand the logic of reducing the redress by a notional tax charge.

Mr N also said that he couldn't find a value for the index I'd said should be used for the redress calculation.

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 asked Aviva to tell me where exactly they disagreed with my analysis of the timeline, noting that without any further input on this, I would have no evidence to allow me to change my recommendation. They didn't respond. I confirm that my timeline acknowledges that a third party caused some of the delay.

I also asked Aviva to explain exactly what information they felt they needed in order to carry out the redress calculation. And I asked them to confirm what they meant about the further loss assessment possibly resulting in a change of outcome. They didn't reply.

As Aviva haven't provided any further information, I see no reason to amend the proposed redress.

Moving on to Mr N's points, I acknowledge that Mr N gave up a valuable GAR when he decided to transfer out of Aviva. But this was his decision. I also acknowledge that Mr N said that he invested the transferred funds in a way that he hoped would replace the income he could've got from Aviva. But I haven't considered this point further as I don't consider it's directly relevant to this decision. I say this because Mr N made this decision before he had any problems with the transfer from Aviva. And although I can see that Mr N's point explains why he decided to invest in the way that he did, I cover this in the next point.

Although Mr N said he was always going to invest in the specific fund that the bulk of his transferred funds were invested in on 28 May 2019, he hasn't been able to provide evidence that he'd made this decision in advance of the completion of the transfer. I consider that if Mr N had made such a decision, he would've instructed his IFA so that the investment could be made as soon as the money was transferred. But this wasn't the case, as the investment

wasn't made until more than two months after the transfer completed. Therefore, while I acknowledge that Mr N said I made an error when I said in my provisional decision: *"I can't know what investment opportunities would've been open to Mr N if he'd invested four months earlier"*, I don't agree. It follows that I also don't agree that the redress calculation I laid out should be changed to be based on the returns from the fund into which Mr N invested most of the transferred funds. I say this because as he hasn't provided evidence that he made the decision to invest before the transfer completed, it wouldn't be fair or reasonable for me to ask Aviva to calculate redress based on the investment he eventually chose to make.

Regarding Mr N's points about the delays he felt Aviva had caused, I agree that I've used the maximum normal turnaround time in my assessment of the delays Aviva were responsible for. I said in my provisional decision that this meant that the delay I calculated was the minimum delay Aviva had caused. I appreciate that Mr N would prefer a different assessment to be made. But I don't consider it would be fair or reasonable to calculate the delay in any other way. I say this because if Aviva had worked to their maximum normal turnaround times at every stage of the process, there'd be no grounds for complaint. So it wouldn't be fair or reasonable to use a shorter period of time in the assessment. I assessed the delays Aviva caused based on the evidence. And I'm satisfied that any other method would be less fair.

Mr N told this service that he doesn't pay tax. I've amended the "What must Aviva do?" section below to reflect this.

Aviva should provide Mr N with a copy of the redress calculation. This should be as simple as possible so it is clear how the redress has been calculated.

Mr N made a further suggestion regarding how the interest should be added to his redress. I considered his proposal but have rejected it on the basis that my redress is based on this service's usual process.

Having carefully considered all of Mr N's points, I'm not persuaded to change my opinion. I remain of the view I set out in my provisional decision.

Putting things right

Fair compensation

My aim is that Mr N should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr N would've invested the transferred funds approximately four months earlier if Aviva had caused no delays to the transfer. It's not possible to say precisely how he would've invested the funds, but I'm satisfied that what I've set out below is fair and reasonable given Mr N's circumstances and objectives when he invested.

What must Aviva do?

To compensate Mr N fairly, Aviva must:

- Compare the performance of Mr N's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.

- Aviva should add interest as set out below.
- If there is a loss, Aviva should pay into Mr N's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Aviva is unable to pay the compensation into Mr N's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr N won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr N's actual or expected marginal rate of tax at his selected retirement age.
- Mr N has told this service that he doesn't pay tax.
- If the fair value is greater than the actual value, Aviva should subtract from the loss calculated the amount of interest they've already paid Mr N. This calculation cannot result in a negative value, and should be subjected to a minimum of zero.
- Pay Mr N £250 for the distress and inconvenience all the delays caused him, unless this has already been paid. I acknowledge that Mr N doesn't consider that £250 is fair under the circumstances. But I consider that as my redress would put him back into the position he should've been in, but for Aviva's delays, it is reasonable under the circumstances.

Income tax may be payable on any interest paid. If Aviva deducts income tax from the interest, it should tell Mr N how much has been taken off. Aviva should give Mr N a tax deduction certificate in respect of interest if Mr N asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Still exists	FTSE UK Private Investors Income Total Return Index	14 November 2018	21 March 2019	8% simple per year from my final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr N wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr N's circumstances and risk attitude.

My final decision

For the reasons given above, I uphold this complaint. I require Aviva Life & Pensions UK Limited to take the actions detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 24 May 2022.

Jo Occleshaw
Ombudsman