

The complaint

Mr F complains that he's lost out financially due to Aviva Life and Pensions UK Ltd (Aviva) selling his pension investments after he withdrew his instruction to disinvest and hold his pension in cash.

He also complains that Aviva didn't properly action his request to remove the adviser from his pension plan.

What happened

I issued my provisional decision on Mr F's complaint in May 2022. I said I was minded to uphold his complaint, but that I proposed to make a different order for redress to that set out in our investigator's view. Aviva accepted my provisional decision, Mr F did not.

Background

Mr F had a pension plan with Aviva. This was taken out through an adviser. The plan was set up for the adviser to be paid ongoing charges for providing advice. Mr F contacted Aviva to remove the adviser. Aviva told him the adviser charge would be cancelled going forward. Aviva accepts not removing the adviser charges and also not updating its records to show that Mr F no longer had an adviser. As consequence of Aviva not updating its records, Mr F was not able to manage his plan online and make trades personally, which he should have been able to do.

On 12 March 2020, Mr F contacted Aviva because he wanted to sell his pension investments and hold them in cash. Mr F discovered he was unable to do this on-line. Aviva sent an acknowledgement to say it could take between five and ten days to give effect to his instructions.

This was longer than Mr F expected and given the volatility of the markets due to the Coronavirus pandemic, Mr F reviewed his position. Mr F said having discussed things with his wife on the evening of the 12 March 2020, he decided it was best to cancel his instruction to disinvest.

On 13 March 2020, Mr F called Aviva. The agent he spoke to confirmed that trade requests were usually processed within 24 hours, but as they had to contact the fund managers in his case, it could take five days or more for the funds to be available. Mr F made it clear that he still wanted to cancel his instruction to sell off his investments.

Aviva accepts that in error, it overlooked that Mr F had withdrawn his disinvestment instruction. It went on to convert his pension assets into cash.

On 23 March 2020, Mr F looked at his plan on-line and noticed his investments had been sold and converted into cash. He called Aviva on 25 March 2020. Mr F later learnt that customers couldn't contact Aviva at the time by phone due to the pandemic. So, Mr F then emailed Aviva to understand what his options were arising from this error.

On 6 April 2020, Mr F raised a complaint, not having heard back from Aviva. He began

reinvesting his pension from this date. He explained however, that not having heard back from Aviva, he wasn't sure whether there had been a system error and whether his portfolio would be readjusted to the position pre- disinvestment, as if his investments had not been sold.

On 28 April 2020, Aviva wrote back accepting it had sold off his investments in error. When discussing how to compensate him for its error Aviva said this:

"I will assume your sell down instruction was placed when you originally requested this on 12 March 2020. If there has been a loss, I will apply a cash adjustment to your portfolio, which you can then invest as you wish."

Can I ask that you:

- 1. Let me know by 01/05/2020, if I have understood this correctly. If I don't hear from you by this date I will assume I have understood it correctly and proceed accordingly.*
- 2. Please take this opportunity to let me know of any impact this has had on you."*

Mr F responded on 30 April 2020 saying this:

"I am therefore prepared to accept a second method which is to assess the financial impact to myself of the incorrect sell-down versus what my fund value would now be, as if the error and sell- down had not occurred".

On 1 May 2020, Aviva sent Mr F its final response, upholding his complaint. It set out how it intended to put things right. This included assessing his loss based on him selling his investments on 12 March 2020, the date it said he would have been able to complete the transaction on-line himself, if the system had been updated to show he no longer had an adviser.

On 4 May 2020 Aviva sent a further response. It concluded he had lost £2,575.67 and offered an additional £150 compensation for any distress caused.

On 14 May 2020 Aviva sent another response. This time it said it had calculated his loss to be £2,918.26 loss, which had been added to his pension plan. An additional £150 compensation was offered for distress and inconvenience. Mr F didn't accept this offer, pointing out what he said were errors in the calculation of the redress.

On 22 June 2020 Aviva sent a further response with an additional £200 compensation. It calculated that Mr F had lost out financially by a further £33,385.50 and this was paid into his pension plan that day (total loss £36,303.76). Mr F didn't accept Aviva's revised offer and referred his complaint to this service.

Aviva accepted that Mr F should not have been paying an adviser charge from April 2019 onwards. It agreed to repay these charges and included them in the loss assessment. Aviva also accepted that once the adviser was removed, Mr F should have been able to make changes and trades on-line. Aviva also accepted that the timescales for making the trades should have been made clearer and that an error was made when it overlooked that he had withdrawn his disinvestment instruction.

Our investigator concluded the only issue left for him to determine was the basis on which Mr F's loss should be calculated and whether Aviva had carried out its loss assessment in a fair and reasonable manner.

Our investigator concluded that the basis upon which Aviva had calculated Mr F's financial loss was not fair and reasonable. The investigator took the view that the £600 Aviva offered for the distress and inconvenience caused, was, however, fair and reasonable in the circumstances. It was understood that Mr F had been paid this.

Our investigator proposed that Mr F's financial loss should be calculated as follows, as if:

- Mr F cancelled his instructions on 13 March 2020, his pension plan was not disinvested and remained in the same funds.
- Any loss Mr F suffered should be determined by obtaining the notional value of the pension plan on the basis the funds hadn't been sold, and subtracting the current value of the pension from this notional value, taking into account the investments Mr F made after 6 April 2020.

Neither Mr F nor Aviva accepted our investigator's view.

My provisional decision

I set out a different methodology for calculating loss in my provisional decision.

Aviva accepted my provisional decision.

Mr F didn't accept my provisional decision and said, in summary:

- He could not get through to Aviva due to staff working at home because of the pandemic, all communication had to be by email.
- His situation warranted a call back and the fact that Aviva didn't call him added to the stressful situation for him and his wife.
- He couldn't reinvest in virtually all of the funds he was originally invested in. So he had to spend time and effort searching for funds matching those in his original portfolio. Aviva has misrepresented the position about being able to reinvest in the original funds.
- Reasonable time should have been given for him to investigate and reinvest a large sum of money, given he was unable to just reinvest it in the same funds.
- He was left with £600,000 cash, one or two original funds to invest in and no experience of selecting funds and using the Aviva platform.
- He was left in a vulnerable position, especially given how fast the markets were moving at that time. He had to act quickly to mitigate his losses.
- On 1 May 2020, Aviva made it clear that it would not be buying/selling his reinvested funds to try and reestablish his original position.
- An additional 12 days to 12 May 2020 to fully reinvest is just and not unreasonable given all the circumstances and the fact that he had to make complex investigations and decisions.
- He tried to mitigate his loss as best he could, trying to resolve Aviva's error. He was fully reinvested within a reasonable timeframe by 12 May 2020.
- In the early stages, Aviva sent a worksheet showing loss calculations which were incorrect. He highlighted this to Aviva, who in response wrote telling him that it was closing his case. Only through repeated emails did he get Aviva to reconsider its position. The error was over £30,000 in his favour. Aviva was not open and transparent about the reason for the error.
- Aviva has let him down in many ways, from failing to update the position regarding the adviser, which restricted his on-line trading capacity, incorrect charges, selling down his entire portfolio, having no processes or controls to stop this, not speaking with him or responding about this over a prolonged period causing further stress

- and not producing an accurate spreadsheet to calculate his loss.
- Taking all of this into account, he feels £600 is inadequate redress for the upset and stress caused. He is still missing out on compensation for the stress and inconvenience caused over the last two years and the impact this has had on his retirement planning.
- Any compensation payment(s) can be made directly to his portfolio without any tax issues or investment limits.
- He asks that Aviva makes available the workings for calculating redress and that interest is paid given the delay.
- He asks that Avia confirm what the average spread or difference between a fund buying price and a fund selling price is, typically 2-5% he thinks. Further he asks for it to be taken into consideration that most funds also have a percentage charge when you first make a purchase and this additional loss should be included as he had to buy into either his original or new portfolio. He accepts a new portfolio is his choice and therefore his responsibility.

Mr F's complaint comes back to me to consider.

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 have considered Mr F's further representations. I am sorry to disappoint Mr F, but my view has not, for the most part, changed. I'll explain why.

There were three main errors made by Aviva here:

- It didn't remove the adviser charges when Mr F decided not to carry on using an adviser.
- It didn't make the system changes required, so that Mr F could personally trade on-line.
- It didn't comply with Mr F's instruction given on 13 March 2020, *not* to convert his pension assets into cash.

Mr F also sets out how Aviva has let him down in the handling of his complaint about these issues – in particular the timeliness of its response and its calculation of redress.

The issue left for me to decide here is how to compensate Mr F for these shortcomings, in particular:.

- the methodology to be used to assess fair compensation for financial loss; and
- whether the offer made for non financial loss (trouble and upset caused) is fair and reasonable.

Adviser charges

I'm told Aviva has refunded the adviser charges. So, I don'tt need to consider this aspect of Mr F's original complaint.

System not allowing on-line trades

As I said in my provisional decision, I've noted what Aviva's said about the fact that Mr F wouldn't have been able to cancel his disinvest instruction, had the system been set up properly for him to make on-line trades. However, he couldn't trade on-line at the time in

question, due to an earlier accepted error by Aviva. He was told the next day on the phone that his trade from the day before *could be* cancelled (it not being an on-line trade). So, I don't think it fair or reasonable to proceed on the basis that Mr F *should be* treated as if he didn't have the option to cancel the instruction to disinvest on 13 March 2020. The only reason it wasn't cancelled, is because Aviva made a further error. He was told he could cancel, even if that possibility arose as a consequence of an earlier error. The irrevocable on-line trading option wasn't available to him on 12 March 2020. I agree with our investigator, it would not be fair or reasonable therefore to proceed on the basis that loss should be calculated from 12 March 2020.

Assessing loss for disinvesting

After Mr F's funds were disinvested, he contacted Aviva very soon after to try to get this rectified. When he didn't hear back, he effectively had two choices - leave things as they were, with his pension in cash, or invest the funds, not knowing what Aviva's position was on whether this was a system error that might be rectified by it.

It's not in dispute that Aviva disinvested Mr F's pension funds contrary to Mr F's instructions. Mr F should, therefore, be treated as if those funds remained invested as before, until a time when it was clear that moving forward, Mr F knew he was responsible for his own investment decisions.

As I said in my provisional decision, I think that became clear on 1 May 2020, when Aviva confirmed in writing that it was not going to rectify the situation by restoring his pension account to its original pre investment position, instead there would be a cash adjustment, which he could choose how to invest himself going forward.

Aviva first made contact with him on 28 April 2020, accepting then, it had made an error. This was around a month after he first contacted it about the disinvestment and at a time of significant market volatility. Until this point, Mr F didn't know how Aviva would respond. Mr F did not become fully reinvested until 12 May, two weeks later.

I think Mr F would've known from 1 May 2020, that he would be responsible for the investments decisions he made going forward. I note on 30 April Mr F proposed a second methodology for calculating loss. Mr F said:

"I am therefore prepared to accept a second method which is to assess the financial impact to myself of the incorrect sell-down versus what my fund value would now be, as if the error and sell-down had not occurred."

Aviva accepted the next day the notion that Mr F's policy shouldn't be re-constructed and going forward he would be free to invest as he wished.

I don't think it would be fair for another notional valuation date to be used to calculate fair compensation, I think what Mr F proposed at the time in question was reasonable –he proposed that his fund was valued *"now"*.

Mr F didn't invest in the same funds after 6 April 2020 as he was invested in originally. This doesn't lead me to conclude, as Aviva suggests, that he had formed an intention from the outset to switch funds. I think he did so from this date, to try to mitigate any loss he may have.

I've not seen anything that leads to me to conclude that it was not open to Mr F to invest in the same investments he was previously invested in. However, I also accept, it may have been harder for him than it was for Aviva to locate these on a system which offered lots of choices. So, at the time of events, I can see why Mr F would've reasonably believed this option wasn't open to him, even if it was.

Based on the information available to him at the time, and the volatility of the markets, I think Mr F acted reasonably by seeking to mitigate his loss. I accept what he's said about

reinvesting tentatively to begin with, whilst waiting to hear back from Aviva. Had Aviva been able to put things right sooner, it would have been clear to Mr F at an earlier stage, how Aviva viewed matters and whether this was a 'system error, which might right itself.

By the time that Aviva did contact Mr F, he was well on the way to making investment choices. The need to come up with an investment strategy was rather sprung on him as a result of Aviva's error and at a time of significant uncertainty, which must have been unsettling for Mr F.

I don't think it can be reasonably held against Mr F that he didn't ask Aviva for assistance about fund choices. Aviva didn't come back to Mr F for around a month after he contacted it about its error. Having heard nothing from Aviva in the interim, to an extent the opportunity of asking for assistance had passed. I appreciate that at the time Aviva was likely trying to mobilise a home-based workforce due the pandemic and that this presented communication difficulties. But the reality of that situation was, Mr F had to make decisions, arising from Aviva's mistake, not knowing how Aviva was going to respond.

Mr F was not fully reinvested by 1 May, but I think he was aware from then that he was responsible for reinvesting the disinvested cash going forward. I have taken into account what he says in response to my provisional decision about it being just to allow him another 12 days from 1 May 2020 to get fully invested. I have balanced that against Mr F indicating to Aviva on 30 April that his policy should be valued 'now' as if the sell down had not occurred. So after that time, keeping some money in cash for around another two weeks, was a choice I think he made, albeit one that was foisted upon him, rather than it being purely of his own volition.

So, overall, I think it fair and reasonable to calculate Mr F's loss on the presumption that his pension investments would have remained invested in the investments they were previously invested in until 1 May 2020, by which time he had indicated to Aviva that he was prepared to take responsibility for his investment decisions going forward.

Putting things right

I make the following award for compensation. In awarding fair compensation, my aim is to put Mr F back into the position he would likely have been in, had it not been for Aviva's error. I think this would have meant Mr F remaining invested in the same funds as he was invested in on 13 March 2020, until 1 May 2020, when he took responsibility for his own investment decisions going forward.

I think it was apparent to Mr F that from 1 May 2020, he was responsible for the performance of his fund after that.

Any loss Mr F suffered should be determined by obtaining the notional value of the pension on the basis the disinvested funds remaining invested until 1 May 2020, in the same manner as they were invested on 12 March 2020 and subtracting the actual value of his pension fund as at 1 May 2020. If the answer is negative, there's a gain and no redress is payable.

If Mr F has suffered a loss, the compensation amount should, if possible, be paid into Mr F's pension plan.

Mr F said in response to my provisional decision that Aviva should be required to pay interest on any loss calculated. I agree that would be a fair and reasonable thing to do given that Mr F did not have the benefit of this money to invest. Aviva has agreed to pay

interest. So, I order that Aviva should also pay interest if Mr F has suffered a loss. Interest is payable at 8% simple per year on any loss from 1 May 2020 until the date of settlement.

Credit should be given for the amounts already paid into Mr F's pension fund by Aviva for the disinvestment loss aspect of his complaint when assessing any compensation to be paid and interest payable. Mr F has also received a refund for overpaid adviser charges, which is unaffected by the award here.

Income tax may be payable on any interest awarded.

The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance. Mr F believes this will not be an issue.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr F as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr F hasn't yet taken any tax-free cash from his plan, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately.

Aviva must provide details of its loss calculation to Mr F in writing in a clear and simple format.

Mr F has clearly been caused some trouble and upset to his retirement planning by Aviva's actions here. Having regard to other awards made by this service, I remain of the view that £600 is an appropriate amount of compensation to redress the shortcomings identified.

I understand that Aviva has already paid Mr F £600 in compensation overall, for the distress and inconvenience caused by its error or omissions. I therefore make no further award for trouble and upset.

My final decision

I uphold Mr F's complaint and order Aviva Life and Pensions UK Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 9 September 2022.

Kim Parsons
Ombudsman