

The complaint

Ms G complains that Aviva Life & Pensions UK Limited unreasonably delayed the transfer of her existing pension plans to a flexi-drawdown scheme.

What happened

On 21 June 2019, Ms G met with Aviva's adviser to discuss transferring three existing pension plans to a new policy so that she could take a flexi-drawdown plan. The adviser recorded, in summary, that Ms G's stated aims were to bridge a gap in income before she began to receive her state pension and increased rent payments and take a lump sum to allow her to carry out renovation works at her home.

In October 2019, Aviva's adviser completed a suitability report, setting out their recommendations. This was passed to Aviva's compliance team for sign-off. Following the compliance's team's review, the adviser re-submitted the report at the end of November 2019. The report was provided to Ms G at a further meeting on 12 December 2019. At this point, the application couldn't proceed as Ms G didn't have the necessary identity documentation which Aviva required.

And in early January 2020, Ms G told the adviser that she was going to be receiving funding towards the renovation works and some funding towards surgery she was due to undergo. She needed to carry out some repair works to the property too. And she'd also changed one of her future plans, as she was re-evaluating whether or not to take a course. So the adviser felt he needed to prepare a new report. Ms G says there were significant errors in the report, which she identified, and she passed on her concerns to the adviser.

Ms G had indicated that she wished for the transfers to be completed by the end of the 2019-20 tax year, to allow her to take advantage of the unused part of her personal tax allowance by drawing down an additional tax-free capital sum. The adviser informed Ms G in January that they were in plenty of time to do so. Ms G subsequently surrendered a separate policy and sold some shares, which the adviser also wished to take into account as part of their report.

The adviser received all of the information they required to complete the new report by 27 February 2020. The report set out their recommendations and was then referred for internal checking. Due to a duplication in this process, there were additional delays until 11 March 2020.

So in mid-March 2020, the adviser let Ms G know that the transfers could no longer be completed by the end of the tax year. Therefore, they suggested that Ms G might wish to make use of Aviva's 'self-serve' option to carry out the transfers. But when Ms G looked into this, she learned that the transfer could not happen in time, due to the transfer timescales.

Ms G was very unhappy with the delays she'd experienced. In brief, she felt the adviser had misled her as to the time the transfers would take. She'd initially been working to a deadline of completion prior to the UK's withdrawal from the European Union and subsequently, to a deadline of the 2019-20 tax year end. She stated that the adviser had recorded incorrect

information about her income. She considered she'd lost opportunities to make use of the unused portion of her tax-free allowance for that year and the value of her pensions had dropped during the delays. Ms G felt that as a result of Aviva's handling of this matter, she'd been caused upset and stress. She'd also had to cash in a life policy in order to access funds and take money from a savings pot in order to get by.

Aviva didn't agree that it'd been responsible for all of the delays Ms G had experienced. It felt the case had been a complex one and that Ms G's change in circumstances had extended the period of delay. But it acknowledged that it could've managed Ms G's expectations better than it had done and so it paid her £300 compensation.

Ms G remained very unhappy with Aviva's handling of her transfer request and so she asked us to look into her complaint.

Our investigator didn't think Aviva's offer of compensation was enough to put right its mistakes. While she felt Aviva had provided a satisfactory explanation for the delays after December 2019, she didn't think it had demonstrated why there'd been a delay between the June 2019 meeting and the completion of the adviser's first report. But she noted that Ms G still hadn't completed the transfers, which she didn't think was Aviva's fault. Overall, she recommended that Aviva should pay Ms G a further £200 in compensation.

Neither party agreed with the investigator's recommendations.

Aviva stated that it hadn't caused the delays between June and November 2019 – it maintained that these were down to Ms G.

Ms G responded in detail to our investigator and so I've summarised her response:

- She didn't feel that the investigator's assessment set out an accurate picture of the facts and details;
- Aviva had caused her ongoing tax and other real financial losses, as well as personal detriment;
- The unresolved relationship between her and Aviva had effectively placed a block on her ability to look elsewhere for a pension provider or an alternative scheme;
- She'd undertaken months of research ahead of the initial meeting with Aviva and had provided comprehensive information, with no deficiencies which could've caused any delay;
- At no point during Ms G's discussions with Aviva had she ever suggested that the delivery of the original advice report should be held back pending the authorisation of the renovation grant;
- She set out some theories in relation to the adviser's circumstances as to why the presentation of the December report was delayed;
- The adviser hadn't let Ms G know ahead of the December 2019 meeting that the ID Aviva required was time-restricted;
- The extended delay into the New Year had allowed Ms G to identify serious errors in the initial report and refer these back to the adviser;
- She didn't think there'd been any imputation that the necessary property repairs and renovation grant would have a material impact on her pension transfer decision;
- The suggestion that she should use the 'self-serve' option had been made in some panic and desperation on the adviser's part. When she'd contacted the self-serve team, it'd become clear that any opportunity to complete the transfer before year-end had passed;
- She's suffered the loss of two personal-tax allowances, and these cannot be recouped. This doesn't take into account the losses in the value of her pension funds

- as a result of this matter;
- She'd never had sight of the adviser's second report. And she didn't have the specialist knowledge to know what our decision might be, so she felt under a duty to leave her existing pensions where they were;
- The additional compensation the investigator had recommended was a trivial amount and in no way represents her actual financial losses and the impact on her personally.

Provisional decision

The complaint was referred to me for an ombudsman's decision.

I issued my provisional decision on 12 September 2022. In my provisional decision, I explained the reasons why I intended to uphold Ms G's complaint. I said:

'First, while I've summarised the background to Ms G's complaint and the submissions she's provided, I'd like to reassure her that I've carefully considered all that she's said and sent us. Within this decision though, I haven't commented on each point she's raised and nor do our rules require me to. Instead, I've focused on what I think are the key issues.

It's clear that Ms G feels very strongly about the way that Aviva handled her pension transfer request. I don't doubt how frustrating this situation has been for her and I sympathise with her position. I'm thankful to both parties for the evidence they've provided to us.

Aviva said that these types of transfers generally take around three months. Given the first meeting with Ms G took place in June 2019, it seems that ordinarily, it would've been completed by mid-late September 2019. Instead, the transfer to a flexi-drawdown scheme still hadn't taken place by the time Ms G complained to Aviva, during March 2020. So in deciding what's fair and reasonable, I've placed significant weight on the contemporaneous evidence available from the time of the transfer, to help me to decide what's most likely to have happened and what's most likely to have caused the transfer delays.

First, I considered the fact-find Aviva's adviser completed following their first face-to-face meeting with Ms G. This stated that Ms G was living on limited income, but that this would improve once she became entitled to a state pension. Her stated aims were to access her existing pensions to take a regular monthly income of £200 in the following tax year (20/21), which would negate the need for Ms G to access her savings. She also wanted to take a tax-free cash lump sum to carry out home improvements. Ms G's short-term priorities were noted to include the renovation work and the costs of medical treatment. It's clear from the fact-find that Ms G wanted to get the renovation works carried out by the end of the tax-year.

The fact-find was updated after another meeting on 22 July. This stated that Ms G had been told about a potential renovation grant during July 2019 and that she'd been discussing this with surveyors and the council. 'Additional notes' on the fact find stated that there'd been limited progress during August 2019, as Ms G looked into the possibility of the grant.

It isn't at all clear to me from the evidence that Ms G asked Aviva to delay progressing with the transfer process until she knew whether or not she'd be entitled to the grant. Indeed, the fact-find clearly states that if she was entitled to the grant, she'd still take it and put the pension monies towards a new kitchen too. As such, I don't think the evidence supports Aviva's conclusion that Ms G didn't want the adviser to proceed with drafting a report until she knew the outcome of the grant application. Neither do I think the available evidence indicates that the transfer process was in any way dependent on the grant. So I don't think it was reasonable for Aviva to delay drafting the report until it received further updates on this point. It seems to me that the drafting of the report could therefore have begun fairly

promptly following the initial fact-find meeting.

I can see from Aviva's notes that the adviser requested valuations of Ms G's existing pension pots on 16 September 2019. This included valuations from a third-party pension provider. This information was received broadly three weeks later. I don't think I can fairly hold Aviva responsible for the delay in receiving the information. But in my view, the adviser could have requested those valuations in June 2019, rather than waiting for a further two and a half months. Given the timeline of events that actually followed, it seems that the pension valuation information is likely to have been received in around three weeks had it been requested in late June 2019. Had this been the case, I think the adviser would likely have been in a position to draft his initial report by the end of July.

The evidence suggests that the compliance sign-off process took around six weeks. I think that if Aviva had progressed the drafting of the report following the adviser's first meeting with Ms G, rather than unnecessarily waiting for information about the grant, the report could've been signed-off broadly by late August/early September 2019. This means I think the transfer could potentially have been completed by the end of September /early October 2019. This was prior to Ms G being awarded the grant and prior to her circumstances changing to the extent that the adviser seems to have believed the original report was no longer appropriate. So I think it's likely the transfer could've progressed smoothly and well within the timeframe Ms G had stressed was important to her had the application been progressed promptly in June 2019.

If I'm wrong on this point though and for completeness, I've gone on to consider what I think ought reasonably to have happened post the December 2019 meeting and Ms G's review of the report.

It's clear that a second report was drafted by the adviser and sent for sign-off by the compliance team. Aviva and Ms G have provided conflicting accounts as to why a second report was needed. Ms G says that she identified serious errors in the report. The adviser's note recorded:

'She called me that morning [3 Jan] and said she had re-read the report and said it captures "exactly the position we were at a month ago, but there have been recent developments that mean a few things have changed". These were now needing cash for chimney repairs and a re-evaluation of the plans to do a...course; I deemed these a major change to the SR so could not proceed on the original one..'

As I wasn't party to the discussions between Ms G and the adviser, I can't know with certainty what was said. I do think though, that based on the change in circumstances Ms G has acknowledged, it would've been reasonable for the adviser to amend his report if Ms G had chosen to continue with an advised transfer process. And if there were mistakes in the recorded information, these needed to be corrected.

However, I think Aviva let Ms G down by maintaining, on 23 January 2020, that the transfer could still be completed by tax-year end. While this was theoretically possible, given the adviser knew he still needed to complete a new report; submit it for checking and then the existing pensions needed to be transferred to Aviva, I think he ought to have been aware that there was a real chance Ms G's aim might not be met. So he ought to have managed Ms G's expectations far better.

In my view, given the adviser went on to suggest that Ms G could utilise the self-serve option in mid-March 2020, it would've been reasonable for the adviser to tell Ms G about this option in January 2020, especially given his awareness of the importance of the transfer taking place before the tax-year end. It seems to me that had she requested a self-serve transfer in

or around 23 January 2020, there would've been more than two months for this to be processed and completed. Instead, Ms G wasn't given this option until mid-March 2020 – by which point there was no possibility that the transfer could complete in time.

And I think, given it's clear how important it was to Ms G that the transfer took place prior to the tax-year end, if she'd known there was a real possibility this wouldn't happen, she'd have taken the option of self-serve in January 2020. Accordingly, I think the failure of the adviser to warn Ms G about the potential for the transfer to be delayed and the option to transfer by self-serve caused Ms G to lose out.

I've additionally gone on to consider what did happen rather than what ought to have happened. It's clear that Ms G didn't go ahead with arranging the pension transfer in March 2020 and she didn't look elsewhere for advice for well over a year after making the complaint. Ms G says she didn't take any further action because Aviva's adviser told her to stay put while her complaint was investigated. I asked Aviva if it could provide any evidence of any correspondence it had with Ms G after March 2020. It told us that it had already provided the records it had.

Having reviewed that correspondence, there's simply no evidence that Aviva gave Ms G any kind of a steer about what her options were once she learned that the transfer couldn't happen in time. Aviva had left her in a position where the transfer couldn't proceed before an important deadline and it seems it then took no real responsibility to try and help Ms G move forwards. Whether to continue on an advised basis, go ahead with the self-serve option, keep the status quo or go elsewhere for advice. As Ms G wasn't an experienced investor and had approached Aviva as she was worried she couldn't deal with this herself, I would have expected Aviva to try to help her resolve things. Instead, it appears it simply left her to navigate what to do next herself. I don't think this was fair or reasonable in the circumstances.

With that said, Aviva has now confirmed that it waived the fees for the advice Ms G received. So it seems to me that Aviva did take steps to recognise that there'd been failings in the advice process.

As I've set out above, I think that but for Aviva's errors, the transfer would have completed by the end of the 2020 tax year – whether as a result of the report being written promptly following the initial meeting or because Ms G could have taken the self-serve option in January 2020. It follows that I currently think she'd have been able to take pension benefits before the end of the 2020 tax year had things happened as they ought to have done. Ms G says her personal tax allowance wouldn't have been exceeded had the transfer gone through in time. This was of real importance to Ms G.

However, the transfer didn't take place ahead of the tax-year end and Ms G's income was due to increase in the tax years following. So I think it's likely that once Ms G begins to take pension benefits, she'll exceed the tax-free allowance. It follows that I do think Aviva's errors meant Ms G lost the opportunity to draw an additional tax-free lump sum from her pension. As such, Ms G will suffer a financial loss she wouldn't otherwise have done when she begins to draw benefits, as she'll be over the tax-free allowance. And I think it's appropriate that Aviva should compensate her for this additional tax liability.

I've gone on then to consider how I think Aviva should put this loss right. I don't know exactly what Ms G's actual loss will be as it will depend on how she draws her benefits in the future. And I appreciate the situation has been made more complex by Ms G not drawing her benefits back in 2020. However, as explained above, I think Aviva caused this situation by not advising her how to proceed. And I think it's fair to all parties to draw a conclusion to this matter and allow Ms G to move on and give her some certainty.

Aviva recommended in its second report for Ms G to take an additional lump sum of £13,600 to stay within her personal allowances for 2019/20 and 2020/21 (£8,000 and £5,600 respectively). I think it's reasonable to assume that in future, given her increased income, she won't be able to take these sums tax-free again. I think it's fair and reasonable in the circumstances for Aviva to pay 20% of this sum (i.e. £2,720) to account for possible future tax liabilities. I appreciate this isn't a perfect solution and Ms G's liabilities might be more or less than that, but in order to conclude this matter, I think my proposed award is reasonable.

Ms G has referred to the fact that her pension funds remained invested longer than she'd planned. I understand she may have concerns that the value of these funds have fallen as a result of them remaining with their providers beyond March 2020. It's fair to say that values had likely fallen significantly in March 2020 as a result of the impact of Covid-19. However, since then, the markets have recovered, and Ms G has therefore had the benefit of her funds being invested for longer. On this basis, it appears unlikely that she's been financially disadvantaged as a result of the funds having been invested longer than she intended.

Next, I've thought about what fair compensation for the distress and inconvenience Aviva has caused Ms G should be. Aviva recognised it made errors and it offered Ms G £300 compensation. I don't currently think this goes far enough to reflect the trouble and upset Ms G has been caused as a result of Aviva's delays and errors. Ms G was clear throughout how important it was to her that this transfer happened by a particular date and she sought advice many months ahead of that date. She told the adviser that she had medical issues and that she needed to undertake renovation work so that her house remained safe and accessible for her. She also intended to put the money towards surgery. She's told us too that she had to cash-in a life policy earlier than planned, in order to access cash and that she was short of funds for some months. I don't doubt how frustrating and worrying these delays were to Ms G, especially given she was assured that the transfer would take place in time and she was left short of money and unable to access the funds she needed.

On top of that, as I've said, I don't think Aviva took steps to help direct Ms G as to what options were open to her. Given Ms G's health in particular, I think the delays Aviva caused were likely to have had a significant impact on her, as they potentially affected her ability to complete the renovation works and undergo surgery and caused her real distress and inconvenience.

I appreciate Aviva waived its advice fee, which strictly, it was entitled to charge, given the adviser did give Ms G advice she wanted and provided a report. In my view, on top of this fee waiver and the payment for Ms G's financial loss I've set out above, I think it would be reasonable for Aviva to pay Ms G £750 compensation.'

I asked both parties to send me any additional evidence or comments they wanted me to consider.

Responses to my provisional decision

Aviva said that it disagreed with some of my conclusions, but it did agree that mistakes had been made. So it agreed to accept my proposed award of £2,720 in lieu of Ms G's potential tax liabilities and to increase the compensation for Ms G's trouble and upset to £750 (less the £300 it had already paid her). Aviva said that Ms G was at liberty to arrange a self-serve transfer or to contact an independent financial adviser for further advice.

Ms G considered that there had been some small discrepancies in the background to my provisional decision, but said she was content to let these pass. She had two broad queries:

- My proposed award for potential tax liability had been drawn from figures set out in Aviva's second suitability report, which she hadn't seen so she couldn't give a precise judgment on the numbers it quoted. In the absence of the sight of the second report, she felt it was likely that the adjusted tax analysis on which it was based would probably have only taken account of the errors in the December 2019 report.
- However, in Ms G's previous submissions to us, she had stated that her unused tax allowance for 2019-20 and 2020-21 was £7,500 for both years. This was her full personal allowance, less her correct taxable gross rental income. These numbers had been accepted as being correct by HMRC.
- Ms G said that one of the errors on the December 2019 suitability report was that Aviva had used net rather than gross figures for rental income. So, her working figure for total lost tax allowance over the two-year period was £15,000. 20% of this amount would total a potential tax liability of £3,000. Ms G queried which redress approach would be most appropriate.
- Ms G questioned whether interest would be paid on the compensation figure, to recognise her loss of use of the money over the two-year period.
- Ms G stated she was broadly content with my provisional conclusions and was minded to accept them.

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.

Having done so, my final decision is the same as my provisional decision and I'll explain why.

Neither party has provided any further substantive evidence or comments regarding my conclusions in respect of Aviva's failures during the pension transfer process itself. As such, I see no reason to change those findings and I remain satisfied that but for Aviva's mistakes, Ms G's pension transfer would most likely have completed before the end of the 2020 tax year.

It seems to me that the only remaining issue for me to decide is the appropriate award to recognise Ms G's lost opportunity to make use of her tax-free allowance.

I've carefully noted Ms G's further representations on this point and the reasons why she considers that her likely loss is £3,000. As I've set out above, my proposed award for Ms G's potential tax liability was not a perfect solution. Ms G hasn't yet drawn down her pension benefits and so it's not clear how much additional tax liability she will actually incur. Necessarily then, any award I make is designed to compensate Ms G for potential future notional losses, which may be more or less than £2,720 depending on a variety of factors.

Ms G says that she didn't receive a copy of the second suitability report. It isn't clear whether or not Ms G did receive a copy of it or that her concerns surrounding the tax position were notified to the adviser following her review of the first report. I say that because Ms G sent an email to the adviser on 21 May 2020, which set out the rental tax allowance position, which her brother had alerted her to. This suggests that Ms G may only have learned of the tax allowance once it'd become clear that the transfer couldn't proceed. And I note too that she stated:

'I'm a little surprised that this arrangement was not flagged up in the Aviva quality reviews on your reports ...?'

I think this suggests that Ms G was aware of both reports and it seems unlikely that she wouldn't have requested a copy of the second report at this point if she hadn't already seen it, especially given she felt it contained tax-related errors.

In any event though, I don't think the content of the second report makes a material difference to the outcome here. I identified clear errors in the transfer process which I think will lead to Ms G losing the ability to draw down more of her pension benefits without incurring tax liabilities. Regardless of the report, it remains the case that any tax liability will depend on how Ms G goes on to draw her pension benefits and indeed, whether there are any changes in the tax-free allowance thresholds before she does so. So I simply can't say with any certainty what Ms G's future liabilities might be. And it's on that basis that I still find that an award of £2,720, representing 20% of the additional lump sum of £13,600, which Aviva noted that Ms G intended to take over the relevant period, is fair and reasonable in all of the circumstances.

Ms G has questioned whether the compensation award I proposed to make would include interest at 8% simple. I've thought about this carefully. However, as I've explained, my award is for future notional tax losses. Ms G hasn't incurred any tax liability as yet and the funds remained invested in her pensions. I do accept that Ms G has suffered some loss of amenity as a result of not being able to draw-down her funds. But I consider that I've reflected the impact this had on her in my award for trouble and upset. As such then, I don't think I could reasonably find that Aviva should pay interest on either money award I've made.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint.

I direct Aviva Life & Pensions UK Limited to:

- Pay Ms G £2,720 to compensate for likely tax liabilities
- Pay Ms G £750 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 2 November 2022.

Lisa Barham
Ombudsman