Financial Ombudsman Service

The complaint

Mr B complains that Aviva Life & Pensions UK Limited (Aviva) didn’t transfer the value of his self invested personal pension (SIPP) to his new provider promptly.

What happened

I issued a provisional decision on 13 October 2022. I’ve recapped here what I said about what had led up to Mr B’s complaint. I’ve also repeated my provisional findings, what I provisionally decided and how I thought Mr B should be redressed.

‘*I’m not going to set out details of what happened and how the transfer was progressed as Aviva accepts there were delays. Aviva paid a transfer value of £505,309.78 on 6 July 2020 to Mr B’s new provider. It should’ve been paid on 16 June 2020. In its letter of 20 August 2020 Avia said it would check if Mr B had lost out financially because of the delay. It offered £250 for trouble and upset which was later increased to £500 in total.*

In its letter dated 14 June 2021 Aviva said that the transfer value would’ve purchased more units in (some of) the various funds in which the transfer value (after payment of a lump sum of £60,000 and deduction of charges) was invested. Aviva calculated Mr B’s loss at £5,886.74. Aviva offered £5,003.73 to be paid direct to Mr B and taking into account that a payment out of the pension would be tax free on 25% and subject to (basic rate) income tax on the remainder. I understand that Aviva also offered £2,337.51 to Mr B’s financial adviser for the additional work resulting from the delay.

Mr B didn’t accept Aviva’s offer and he referred his complaint to us. On his complaint form he said there’d been numerous delays on Aviva’s part. He said the ‘final straw’ was Aviva’s refusal to transfer the outstanding funds as a tax free payment to his new provider.

Mr B’s complaint was considered by one of our investigators. Initially he said that what Aviva had offered was fair and reasonable and Aviva didn’t need to do any more. In summary Aviva had accepted it had made mistakes in dealing with Mr B’s pension transfer. The issue was whether Aviva had put things right and fairly compensated Mr B for the delays and any resulting losses. The investigator thought Aviva had done that and so he didn’t think Aviva needed to do any more.

Mr B didn’t accept the investigator’s views. He said Aviva had sent him two cheques for £250 but one cheque had been mislaid and when Mr B had tried pay it in he couldn’t, presumably because it was by then out of date. He’d written to Aviva in April 2022 to request a replacement but, as at 28 June 2022, he hadn’t received anything. He’d been unaware of the amount offered to his financial adviser so couldn’t confirm if it had been accepted or not.

Aviva had offered £5,003.73 after tax deduction to compensate him for his loss. He didn’t view that as compensation as such but repayment of his own money. Despite numerous requests by him and his adviser, Aviva had refused to deposit the funds tax free into his pension fund. Having resigned himself to that he waited for the cheque to arrive. It had been promised in June 2021 and eventually arrived in March 2022, so a delay of nine months.

Mr B said it seemed Aviva had imposed a ceiling of £500 as payment for trouble and upset, even though after that he'd suffered continuing inconvenience. Mr B didn't agree with the deduction for tax. He said the payment wasn't compensation but an adjustment to cover a loss that was incurred and the full amount of £5,886.74 should've been deposited in his account with the new provider. Making a payment directly to him meant a loss of £883.01. He'd been denied the opportunity of a tax free transfer for all his funds.

The investigator wrote to the parties on 26 September 2022 to explain his views had changed. He now didn't think Aviva had done enough. If there hadn't been any delay, Mr B would've benefitted from the payment being invested in his pension without any tax deduction. The investigator said he was unaware of any practical or allowance issues preventing Aviva from paying compensation in that way, even if it wasn't Aviva's normal procedure. He also said Mr B could've taken the money tax free. And, although £5.003.73 was offered in June 2021, the cheque wasn't issued until March 2022. The investigator asked Aviva if it was prepared to adjust its offer and pay a sum into Mr B's new pension to reinstate him (as far as possible) to the position he'd have been in if the transfer value had been paid at the correct time. I don't think Aviva has replied.

As agreement couldn't be reached the complaint has been referred to me to decide.

What I've provisionally 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.

Where, as here, the business accepts it was at fault and has offered to put things right, all I need to consider is if what's been offered is fair and reasonable in all the circumstances of the complaint.

In awarding compensation we aim, as far as possible, to put the consumer in the position they'd be in if the business had done what it should've done and with no delay.

I don't think the loss calculation – showing a loss of £5,886.74 – is disputed. But because Aviva wanted to pay compensation direct to Mr B, rather than into his pension fund, Aviva deducted 15% from it (to reflect that for any withdrawals from the pension 25% would have been tax free and the balance subject to income tax at Mr B's marginal rate, presumed to be basic rate of 20%). So Aviva was only prepared to pay the net sum of £5,003.73 to Mr B.

Mr B says the full amount should've been transferred and so the tax that's been deducted (£883.01) represents a financial loss to him. I understand his argument. But although there's no liability to tax while the money remains in the pension fund, when it comes to be paid out, income tax may be payable. The deduction for income tax is aimed at preventing someone from being over compensated. If, when the money is taken out of the pension, there'd be a liability to income tax, it wouldn't be fair to ignore that when compensation is paid direct to the consumer, rather than by a payment into the pension fund and which is later paid out. I'd add that if compensation is paid into the pension fund then it may not be the full amount – we'd usually say the business can pay in whatever sum is necessary, taking into account any available allowances, so as to increase the fund value by the relevant amount. If the loss is £5,886.74, a lower sum might be paid in to take into account any tax relief. Again it wouldn't be fair if tax relief will increase the amount that's paid.

Turning to Aviva's loss calculation, it was based on the amounts invested in each fund, the unit prices and the number of units purchased. Aviva then looked at the number of units in each investment that would've been purchased if the transfer had been completed earlier at the unit prices then applicable – which in some cases was higher and in others lower. The *differences in values were then added up which showed an overall loss of £5,886.53.*

That figure represents Mr B's loss as at the date of the transfer. Aviva made its offer on 14 June 2021. That was almost exactly a year after the transfer should've been done. And the cheque then wasn't sent until 11 March 2022. In theory Mr B had lost out on the tax free growth the shortfall would've enjoyed in the pension fund. I've said, in theory as, depending on how Mr B's fund has performed in the interim, it's possible there might be no or a reduced loss. Or, if his investments have done well, the loss might be more.

We could ask Aviva to recalculate if there's any loss on an up to date basis and using Mr B's actual current fund value and taking into account the payment Aviva made on 11 March 2022. But the calculation which Aviva undertook was complex – it involved over 50 different investments. An up to date calculation is likely to be even more so, especially if there have been fund switches and any payments in or out of the pension scheme which have to be factored in.

I don't think, given that delay has been a feature of this case, including when it comes to paying compensation, it would be in Mr B's interests (or indeed Aviva's), to prolong matters by saying the calculation should be undertaken again, using up to date figures. Instead, I'm going to take a pragmatic approach and say it would be fair and reasonable to use £5,886.53 as the starting point for Mr B's loss.

Although Mr B disagrees with a cash payment being made, I've explained above why I don't think Aviva should simply pay the full loss figure of £5,886.53 into Mr B's pension fund. And we wouldn't normally insist that a business must make a payment into the pension – that might not be possible and it can cause allowance or protection issues. Instead, where a cash payment has been offered, we'd look at whether the amount offered was fair and reasonable and taking into account the considerations I've referred to above. If Aviva prefers to make a cash payment then I don't propose to interfere with that and when, as I've said, I'm trying to avoid any further delays and take a pragmatic and simpler approach.

I think £5,003.73 is a fair measure of Mr B's loss. But I think Aviva should also pay interest on that sum to reflect the delay in payment. Aviva should pay interest at 8% simple pa from the date the transfer should've been made – 16 June 2020 – to 11 March 2022. That's the rate of interest we'd normally use where the consumer has been kept out of their money.

In so far as the payment for distress and inconvenience is concerned, it seems Aviva has offered in total £500 but because one of the cheques wasn't paid when he presented it, Mr B has only been paid £250. I'd ask Aviva to make arrangements for a replacement cheque, as requested by Mr B, to be issued as soon as possible.

I note Mr B's comments about having suffered further and ongoing inconvenience because of Aviva's continued delays. But I think the £500 offered is fair and reasonable and in line with what we'd award in a case such as this and taking into account the ongoing inconvenience. I'm not going to say that Aviva needs to pay any more for the trouble and upset Mr B has suffered overall.

My provisional decision

I uphold the complaint. Aviva Life & Pensions UK Limited should pay interest at 8% simple pa on £5,003,73 from 16 June 2020 to 11 March 2022. Aviva Life & Pensions UK Limited should also ensure that the payment of £500 offered for distress and inconvenience is received by Mr B. As I've noted above, it seems that £250 remains outstanding.'

Aviva didn't comment in response to my provisional decision. Mr B confirmed safe receipt but didn't have anything to add.

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 reconsidered the complaint again, and in the absence of any further comments, evidence or arguments, my views remain as set out in my provisional decision. I've repeated what I said above and it forms part of this decision. For the reasons I've indicated I'm upholding the complaint.

I've set out below how Aviva needs to redress Mr B. It follows what I said in my provisional decision. In my view, a pragmatic approach is best. I think what I proposed (to which Mr B hasn't objected) is fair and reasonable in the circumstances of this complaint.

Putting things right

Aviva Life & Pensions UK Limited should pay interest at 8% simple pa on £5,003,73 from 16 June 2020 to 11 March 2022. Aviva Life & Pensions UK Limited should also ensure that the payment of £500 offered for distress and inconvenience is received by Mr B. As I've noted above, it seems that £250 remains outstanding.

My final decision

I uphold the complaint. Aviva Life & Pensions UK Limited must redress Mr B as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 December 2022.

Lesley Stead
Ombudsman