

## The complaint

Mrs W complains that Novia Financial Plc (Novia) sold the investments held in her late husband's Self Invested Personal Pension Plan (SIPP) without notification, resulting in investment losses pending the transfer of the funds to her own SIPP. She would like compensation for the losses incurred.

## What happened

The beneficiary of Mr W's SIPP was his wife, Mrs W. Mr W died in September 2020 and Novia was notified of this by his and Mrs W's financial adviser (adviser) on 26 October 2020.

Novia held an expression of wish form (EOW) completed by Mr W, which nominated Mrs W as the sole beneficiary of his SIPP. Novia asked if this was the last EOW and the adviser confirmed that it was on 26 November 2020, along with various other details. The adviser asked that Novia confirm the next steps *"to transfer the pension to"* Mrs W.

Novia didn't reply to the adviser. Instead it wrote to Mrs W on 27 November 2020 (the date on the copy of this letter provided has been redacted, but Novia has confirmed it wrote on this day). The letter confirmed that having considered all the information *"we have gathered"* (that provided by the adviser) it was *"now in a position to make available to you the benefits from"* Mr W's SIPP. It said the:

*"current valuation is £xxx though this may vary before you make a decision".*

Novia asked Mrs W to decide how she wished to receive the benefits from several options, and to return the enclosed form to proceed. It recommended that she take independent advice. It didn't provide the adviser with a copy of this letter or advise that it had been sent.

The adviser says it contacted Novia for updates on a decision on the EOW, but that it wouldn't share any information. The adviser says it continued to press for further information and whilst preparing for a review meeting with Mrs W became aware that the investments within Mr W's SIPP had been sold to cash on 26 November 2020. The adviser says this resulted in an investment loss of around £35,000 compared to what the portfolio would have been worth had it not been sold.

On discovering this, the adviser liaised with Mrs W and emailed Novia a letter from her on 20 January 2020 requesting the transfer of the funds into her own SIPP with Novia. This was processed the next day.

Mrs W complained to Novia about the losses she says were incurred. She said it hadn't advised her or the adviser that the investments had been sold or been sent contract notes showing the trades. Novia rejected her complaint. It said it had followed its standard process in selling down the investments once it had decided on who the beneficiary would be. It said this was to avoid any potential delays once Mrs W had chosen which option she wanted. It said its:

*“normal experience was that we receive confirmation of the options elected shortly after we send the options to the beneficiaries”*

Novia said it avoided chasing beneficiaries for replies out of sensitivity.

It said its procedure was to communicate with beneficiaries directly, so it hadn't contacted the adviser. But it said it had kept Mrs W informed and thought it had *“communicated clearly”* with her and was *“satisfied that our processes are in line with our terms and conditions”*.

Mrs W referred her complaint to our service. She said if she'd known her late husband's investments had been sold to cash she would have reacted immediately as she had missed out on the *“rebound in investment markets”*.

Our investigator looked into the complaint and he decided to uphold it.

He said he could understand why Novia had decided to sell the investment portfolio once the decision had been made that Mrs W would receive the benefits. But that it had done nothing to subsequently pursue the matter. He said the sensitivity of the issue made it more important that some follow up be made, particularly with the pension proceeds being uninvested. And it could have contacted Mrs W or the adviser about the outstanding instruction, as the situation could have continued indefinitely otherwise.

Our investigator said Novia should backdate the transfer to 4 December 2020, this being a reasonable period of time for it to have checked how she wished to proceed after it had written to her. He said Novia should check how Mrs W had invested the funds and calculate what growth would have been achieved. If any growth had been lost out on it should be added to Mrs W's pension plan.

Mrs W said she agreed with our investigator. Novia disagreed and said it would provide further details to explain its position, but it hasn't done so.

As Novia doesn't agree it has come to me to decide.

### **My provisional decision**

I issued my provision decision on 11 October 2022; I explained the reasons why I was planning to uphold the complaint. I said:

*This complaint was originally brought by Mr W's estate. But Mr W's death benefits were held in Trust by Novia and so weren't part of his estate. And once Novia had decided to pass the benefits to Mrs W the funds became hers. So, any investment loss incurred, or distress and inconvenience suffered was also Mrs W's rather than the estate's. Accordingly, I have amended the complainant to be Mrs W rather than her late husband's estate. This doesn't change the facts of the complaint.*

*I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint.*

*Our service doesn't regulate financial businesses and it isn't my role to tell Novia to change its administration procedures, but I can consider whether these have resulted in an unfair outcome. And I think they have here.*

*Novia has argued it has followed its processes in line with its terms and conditions (T&C's). These say Novia:*

*“may pay all or part of any death benefit from your SIPP in any way we deem fit.”*

And:

*“On receipt of satisfactory evidence of death from your personal representatives, we will have the right to act at our discretion”*

*Death benefits from pensions are usually discretionary for tax reasons, so expressions like these aren't unusual. However, the T&C's, and its letter to Mrs W, don't say anything about the standard process being to sell down investments pending a reply from the beneficiary.*

*Novia says that when Mr W died the advisory relationship for his SIPP with the adviser ended. And this is why the adviser wasn't updated about what was happening, even though it had provided the information which Novia was confident enough about to act on. It has also said that it doesn't follow up with beneficiaries through concerns about distressing them.*

*I don't think the procedure to automatically sell investments to cash once death benefits had been allocated is unreasonable in itself. Some beneficiaries will want to receive the funds directly and immediately moving to cash might save several days in this scenario. But not all beneficiaries will have the same requirements. And Mrs W wanted the benefits transferred to her own pension as the adviser informed Novia on 26 November 2020. So, by implication I think it's fair to say she wanted the funds to remain invested.*

*I think Novia should have told Mrs W that the investments in Mr W's SIPP had been sold given the specific circumstances of what Mrs W wanted to do and the fact that Novia, reasonably, should have known this. Had Novia told her what was happening the issue could have been resolved sooner.*

*Novia didn't respond to the adviser's email of 26 November 2020, which I don't think was the best approach here. If Novia couldn't act on the adviser's instructions regarding Mrs W's wishes and couldn't provide specific information about processes then I think it should have told the adviser this and that it required instructions from Mrs W. Especially as she was also a client of the adviser, holding her own SIPP with Novia as the adviser had confirmed.*

*Novia initially seemed to accept this itself. In an email to the adviser of 20 January 2021, it says that a staff member had made an error in not discussing matters with the adviser once her late husband's benefits had been made available to Mrs W. That would be from 27 November 2020. It also said:*

*“From a customer service perspective there would have been no harm in responding to your email of the 26 November 2020 to generically advise of the next steps ... and I apologise that this information was not forthcoming.”*

*Had Novia done so, again I think any potential loss could have been largely averted. Instead Mrs W had no reason to think that the funds didn't remain invested in a similar portfolio to her own SIPP. So, there's no doubt that Mrs W was happy for these funds to remain invested. Had Novia advised that the assets were now in cash I think Mrs W would have taken immediate action and would have promptly re-invested the funds.*

*Mrs W and her adviser believe the investment loss resulting from selling to cash is in the region of £35,000. Had Novia advised Mrs W what had been done with the funds any confusion could have been avoided and time out of investment markets minimised. So, if a loss has been suffered, I think it's fair that Mrs W be compensated for it.*

*Once Mrs W was made aware of the issue she acted immediately and Novia was able to make the transfer to her own plan within a day of being told to do so. Novia wrote with the options available on 27 November 2020. Had it confirmed the investments had been switched to cash in this letter I think Mrs W would have responded equally as promptly and contacted Novia at the first opportunity. The next working day was 1 December 2020, so I think it's fair that Novia should backdate the transfer to 2 December 2020.*

*I've also thought about the distress and inconvenience that has been caused to Mrs W by what has happened. Whilst she was initially unaware of what had been done with the investments Novia's lack of communication resulted in her being advised of a large potential loss which could have been avoided. This caused her distress and inconvenience over an extended period and I think it's fair that compensation of £250 be paid in respect of this.*

### **Putting things right**

*I think Novia should undertake a calculation to establish whether an investment loss has been suffered by Mrs W.*

*It should check how Mrs W invested the funds in January 2021. And then calculate the value of the death benefits transferred assuming these had been invested in the same way on 2 December 2020, to the date I issue my final decision and compare this to the actual value of the investments on the same date, allowing for any benefits or withdrawals Mrs W may have taken in the interim.*

*If the value calculated is greater than the actual value, there has been a loss and it should be paid to Mrs W's SIPP or to her personally as she prefers. The death benefits received from Mr W's pension are normally payable to Mrs W free of income tax. Should Novia conclude that there will be any tax consequences of now making a further payment in respect of this investment loss it should gross up the payment to reflect the impact of any taxation on Mrs W. Mrs W may need to provide Novia with details of her other taxable income in respect of this.*

*Mrs W has suffered unnecessary distress and inconvenience because of what has happened. I think Novia should pay her £250 in compensation for this.*

*If Novia does not make the payments within 28 days of when we tell it Mrs W accepts my final decision it should add interest at 8% per year simple until it does make the payments.*

### **Response to provisional decision**

Mrs W accepted my provisional decision and said that she would prefer the compensation for any investment loss incurred to be paid to her personally rather than into her SIPP.

Novia also accepted my provisional decision and said it had started the calculations to establish if a loss had been incurred.

### **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, I've decided to uphold the complaint.

I don't think Novia communicated with Mrs W clearly. It was provided with instructions by her adviser and if it couldn't act on these, I think it should have confirmed this to both Mrs W and the adviser. And I think it should have informed Mrs W what had been done with her investments.

So, I don't think Mrs W was treated fairly and if an investment loss has been suffered, I think it's reasonable that Novia compensate her for it, putting her back in the position she should have been in.

I also think Mrs W was caused unnecessary distress and inconvenience because of what happened, and it's fair that she be compensated for this.

### **Putting things right**

Novia should undertake a calculation to establish whether an investment loss has been suffered by Mrs W. It should check how Mrs W invested the funds in January 2021. And then calculate the value of the death benefits transferred assuming these had been invested in the same way on 2 December 2020, and compare this to the actual value of the investments on the date of this final decision, allowing for any benefits or withdrawals Mrs W may have taken in the interim.

If the value calculated is greater than the actual value, there has been a loss and it should be paid directly to Mrs W. Benefits from her late husband's pension would normally be payable tax free. If Novia concludes that tax is payable on this compensation payment, it should gross up the payment to reflect the impact of tax. So, that Mrs W is in the same overall position that she would have been in. Mrs W has said she will provide evidence of her taxable income if required.

Mrs W has suffered unnecessary distress and inconvenience because of what has happened. Novia should pay her £250 in compensation for this, which I think is in keeping with what our service would award in similar circumstances.

### **My final decision**

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

I direct Novia Financial Plc to undertake a loss calculation as set out above and if this shows a loss, pay this to Mrs W taking into account the impact of any taxation.

I further direct Novia Financial Plc to pay Mrs W £250 compensation for the distress and inconvenience she has suffered.

Novia Financial Plc must pay the compensation within 28 days of the date on which we tell it Mrs W accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If Novia Financial Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs W how much it's taken off. It should also give a certificate showing this if Mrs W asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 16 December 2022.

Nigel Bracken  
**Ombudsman**