

The complaint

In summary, Mr W complains about the length of time Aviva Life and Pensions UK Limited, took to issue him with pension transfer forms that he asked for. He believes it has delayed the transfer of his pension fund. And he thinks it has asked him to get financial advice that isn't required. He says this has all resulted in him losing money as the value of his pension has fallen.

What happened

I've set out below a timeline of the main events in this case.

On 22 March 2021 Mr W requested transfer forms from Aviva. He subsequently complained about the delays in providing those forms.

On 5 June 2021 Aviva issued its final response to Mr W's complaint. It apologised for the delay in issuing the transfer forms, and accepted it was a mistake on its part. It went on to say that it normally took 10 days for a request to be actioned and 5 days to be received by the customer. It had asked for a specialist team to provide the information urgently. It arranged for a cheque for £75 to be sent to Mr W.

On 29 June 2021 Mr W wrote to Aviva. He explained his original request for transfer forms had been made on 22 March 2021. He had made an official complaint on 7 May 2021. His complaint was acknowledged on 12 May 2021. On 6 June 2021 he had been sent £75. His complaint remained unresolved and he hadn't had any updates.

On 29 June 2021 a letter was sent by Aviva to Mr W saying there were no restrictions on transferring to another company. It set out forms that needed to be completed together with a financial advice form that needed to be completed by a financial adviser, confirming that Mr W had received financial advice. This was required if the policy contained a safeguarded benefit, the value of the policy was over £30,000 and they were looking to transfer their benefits, take an open market option or utilise pension flexibility rules introduced on 6 April 2015.

Also, on 29 June 2021, Aviva said the policy had a guaranteed minimum pension (GMP) and that the transfer value was £47,724. The GMP was £1,174.68 with a widow's pension of £587.60.

On 30 July 2021 L, the pension provider Mr W wanted to transfer his pension to, wrote to Aviva.

On 18 August 2021, Aviva asked for a financial advice form to be completed.

On 5 September 2021, Mr W told Aviva he was purchasing an annuity. And on 24 September 2021, he queried with Aviva why he was required to take financial advice.

On 13 September 2021, Aviva wrote to Mr W and said as he had a policy that included safeguarded benefits worth over £30,000, he needed to return a safeguarded rights

declaration form completed and signed by a financial adviser. This was to make sure appropriate financial advice was given to him before giving up those valuable benefits. It also required the transfer payment release form to be completed and signed by Mr W as his signature on the form he had sent in wasn't clear enough.

On 27 February 2022, Aviva wrote to Mr W's financial adviser and said the policy was now valued at £27,871.

On 8 March 2022 the investigator explained to Aviva that Mr W had complained that the value of his fund had gone down. He asked for all correspondence with Mr W since the complaint file had been provided in August 2021.

On 14 March 2022, Aviva wrote to Mr W. It said that in order to calculate the tax-free cash (TFC) to be paid from the policy it needed the value of his policy with another pension provider as at 6 April 2006.

On 24 June 2022, the investigator issued his assessment on the complaint. This addressed the delays in sending the transfer pack. The investigator said Aviva should pay an additional £125 compensation for the delays it had caused.

On 31 August 2022, the investigator asked for all of the paperwork about the pension transfer. He asked for the reasons why the transfer didn't take place. And he requested e-mails that had been sent to Mr W and his financial adviser.

Several chasers were sent to Aviva asking it to provide the requested information. On 27 October 2022, Aviva responded and said the request had been misinterpreted and the complaint had been closed down. It went on to say that the complaint was being escalated. It apologised for the oversight and offered to pay an additional £125 compensation for the distress and inconvenience caused.

On 16 November 2022, Aviva provided further information and said the last correspondence on the file was a letter of 14 March 2022 to Mr W regarding TFC figures it needed to proceed. It couldn't see that it had received anything since.

On 23 November 2022 the investigator explained to Aviva why he didn't think Mr W needed advice. He asked why it needed information from another of his pension providers and asked if there was evidence as to whether this had been requested prior to March 2022; and whether any chasers had been sent to Mr W.

I issued my provisional decision on 26 January 2023, explaining why I was intending to uphold Mr W's complaint in part.

In response Mr W explained why he didn't agree with what I said. In summary, he didn't think what I had proposed came close to adequately expressing the financial loss and personal stress he had suffered.

In summary Aviva said:

- It accepted there were some delays that were unacceptable. But due to the nature of Mr W's policy its normal turnaround times/service level agreements simply couldn't be adhered to. His policy values had to be calculated manually and could take 3-4 weeks to calculate.
- It provided a call note which it said recorded that Mr W had been told this. It didn't believe the service had been sent this. It appreciated it took another three months to

send the transfer pack. Its standard policy processes were 10-15 working days and 15-20 working days during Covid.

- Delays had been caused by Mr W having not returned the financial advice form. It said it made a number of call attempts to Mr W to inform him what was outstanding. And it said it had contacted the business he was intending to transfer his pension to on a number of occasions to explain what was outstanding. It said I hadn't referred to those call notes and provided details of those in my provisional decision.
- It also said that after Mr W queried why he needed to take financial advice in September 2021, it tried to call him to discuss matters on three separate occasions. Voicemails and texts were left asking him to call back.
- It went on to say it wasn't until an independent financial adviser (IFA) was instructed by Mr W in mid-November 2021, and they requested full policy options and details including and TFC entitlements that TFC needed to be addressed. It said Mr W hadn't asked for TFC in the original transfer request. A letter was sent to the IFA on 6 January 2022 asking for that information. This was returned on 6 February 2022, but the required information wasn't provided. And it said it told the IFA in March 2022 that it required an "A day" value for the other pension policy.
- It appreciated it could have done more in terms of responding in a timely manner to requests from this service. It said Mr W didn't need to wait until a decision was reached from our service.
- It didn't think the distress and inconvenience award I was proposing was fair or reasonable as a proportion of the delays were through no fault of its own. It tried to contact Mr W to keep him updated throughout the process. After referring to this service's guidelines for D&I it agreed that the figure of £200 it had offered was not sufficient. It offered to increase this to £400, which it believed fairly reflected the delays attributed to it. And it considered this was in line with complaints of a similar nature at the service.

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 and having also considered all of the responses and information provided in response to my provisional decision, I've decided to uphold Mr W's complaint in part. I'll explain why.

The key issues I need to decide are the delays caused by Aviva in respect of Mr W transferring his pension and the delays it has caused to this service's investigation into his complaint. My focus is on the delays caused by Aviva not those that may have been caused by any third party or Mr W. I also need to consider whether it was appropriate for Aviva to require Mr W to take advice prior to allowing the transfer to proceed.

Delays on the part of Aviva in respect of Mr W's request for information and documentation

I've outlined above the timeline of the main events leading up to Mr W's complaint. Aviva accepts that there were delays on its part in actioning Mr W's requests for transfer forms in 2021. And it has offered a total of £200 compensation for the distress and inconvenience the delays in providing the transfer pack has caused Mr W. In its response to my provisional

decision, it accepted that the £200 offered wasn't sufficient. And it made an offer of £400 to compensate Mr W for the distress and inconvenience he had been caused.

But I don't agree the compensation it has offered Mr W is sufficient to compensate him for the delays it has caused him in transferring his pension, and providing this service with the information we asked for in order to investigate his concerns. I say this because I can see that Mr W first asked for transfer forms towards the end of March 2021. Despite subsequent chaser requests from him for the documentation he had asked for, and him raising a complaint about the delays on 7 May 2021; it wasn't until the end of June 2021, that Aviva provided the requested information and documentation.

Aviva has argued that as the calculations for Mr W's policy had to be carried out manually, it couldn't be expected to provide the information within the five working days that I suggested in my provisional decision. Whilst I accept that taking into account the information Aviva has now provided, a five-working day turnaround time might not be appropriate in this case, I don't agree that the time frames it suggested were appropriate. Even if calculations had to be carried out manually as Aviva has suggested, I don't think it should have taken more than 10 working days for the retirement information to have been sent to Mr W. And I think approximately two weeks to provide the information Mr W had asked for would have been reasonable and appropriate in this case.

Mr W completed his transfer forms in July 2021. He's told our investigator that he was intending to transfer his policy with Aviva to a personal pension with a company I will refer to as L; and would then consider his options for taking retirement benefits from the new pension. L wrote to Aviva on 30 July 2021. Its letter confirmed that the transfer was to go into its Retirement Pension Scheme.

Aviva wrote to Mr W in August 2021 and asked for its confirmation of financial advice form to be completed. It doesn't appear that this was provided to Aviva and that this was why the transfer didn't progress. But in March 2022, Aviva wrote to Mr W and asked him to provide the value of a policy he had with another provider, so that it could calculate his protected TFC entitlement. At the time I issued my provisional decision, Aviva hadn't provided the information on this point. This was something that the investigator had asked for in one of his information requests.

Aviva has now explained that It wasn't until an IFA was instructed by Mr W in mid-November 2021 and they requested full policy options and details including TFC entitlements, that TFC needed to be addressed. It said Mr W hadn't asked for TFC in the original transfer request. A letter was sent to the IFA on 6 January 2022 asking for that information. This was returned on 6 February 2022, but the required information wasn't provided. And it said it told the IFA in March 2022 that it required an "A day" value for the policy Mr W had with another pension provider.

Now that Aviva has explained what happened I can understand why it needed that information and why it requested it when I did. But I note that even taking into account its own timeline, it took it approximately six weeks to respond to the IFA's information request. And that appears to be outside its own service standards which I think are inordinately long for someone wanting to take retirement benefits, even taking into account the challenging working environment that may have applied at that time.

So, I don't think the information Aviva has provided materially affects the delays that I believe it caused, or the impact on Mr W of those delays. And I'm satisfied Mr W's frustration at the lack of a substantive response to his request and chasers, is evident from his correspondence with Aviva.

Delays on the part of Aviva in responding to information requests from the Financial Ombudsman Service

It's been disappointing that Aviva hasn't responded to information requests from this service in a timely fashion. I say this because following the investigator issuing his initial view in June 2022, and after receiving Mr W's response, he asked Aviva for some more information on 25 August 2022 in respect of Mr W's concerns about his reduced transfer value. This information request was acknowledged by Aviva on 31 August 2022.

The investigator sent several chaser requests for that information. It wasn't until 27 October 2022 some two months after the information request had been made, that Aviva replied. It explained that the case had been accidentally closed and offered a further £125 for distress and inconvenience this had caused. And it wasn't until 16 November 2022 that the information was provided. So, it took Aviva nearly three months to send the information the investigator had asked for. I acknowledge that Aviva says the complaint was closed by mistake, but that was an error on its part which contributed to significant delays in the information request being actioned.

The investigator reviewed the information and wrote to Aviva again on 23 November 2022. In his letter he asked Aviva for some more information. Despite chaser requests from our service, as at the date of my provisional decision, no response had been received from Aviva, which has caused a further two-month delay. And information that the investigator had asked for was only provided with Aviva's response to the provisional decision on 9 February 2023.

I've thought very carefully about the delays caused by Aviva in progressing this complaint. As I've summarised above, the delays it has caused in responding to this service's information requests amount to approximately five months. And I think its response on this point that; *"it could have done more in terms of responding in a timely manner,"* doesn't adequately acknowledge the seriousness of the delays it has caused by not responding to information requests from this service in a timely manner.

The Dispute Resolution (DISP) rules under which the ombudsman service operates, allow our service to set time limits. And DISP 3.5.13 provides us with the specific authority to fix and extend time limits for any aspect of the consideration of a complaint.

DISP 3.5.14 explains that if a business fails to comply with a time limit, we can proceed to consider a complaint and make an award for any distress or material inconvenience caused by the failure to provide that information.

Is the compensation offered by Aviva for the delays it has caused appropriate?

For the avoidance of any doubt I don't think Aviva is responsible for the delays caused by Mr W not returning the confirmation of advice form or the necessary information required in respect of the TFC. I am satisfied though that the delays and mistakes that I've outlined above, have caused Mr W substantial distress and material inconvenience. I say this because it has caused approximately a five-month delay in the investigation which comes on top of the delays in providing Mr W with the information and documentation which led to him raising his complaint. And this has impacted on his pension transfer and the investigation of his concerns by this service. As a result, I consider it appropriate to also make an award for the delays caused by Aviva, as provided for under DISP 3.5.14.

However, I don't think the compensation offered by Aviva sufficiently reflects the impact of all of this on Mr W. Deciding an appropriate figure in respect of awards of compensation for distress and inconvenience, isn't an exact science.

I've considered this service's published guidance in respect of awards of compensation when considering what awards to make. But ultimately it is for me to decide taking into account the facts and circumstances in each individual case, what constitutes an appropriate award of compensation. Having taken everything into account including what I have summarised above; I remain of the opinion that a figure of £1,000 is an appropriate figure to compensate Mr W for the impact on him of Aviva's mistakes and delays.

Was Aviva correct to require Mr W to confirm he had received advice prior to agreeing to transfer his pension?

The information Aviva provided to Mr W explained that his policy had a GMP. This means in practice that whatever the value of the pension, Aviva would have to pay the minimum pension income guaranteed by the policy.

The significance of this is that it meant Mr W's policy had a guaranteed benefit that was considered by Aviva to be a "*safeguarded benefit*" pursuant to the Pension Schemes Act 2015. This was because the value of Mr W's policy at the time of the transfer request, was in excess of £30,000. I've set out the relevant section of the legislation below. Section 48(1) of the Pension Schemes Act 2015 says:

"Where a member of a pension scheme has subsisting rights in respect of any safeguarded benefits... the trustees or managers must check that the member or survivor has received appropriate independent advice before—

(a) converting any of the benefits into different benefits that are flexible benefits under the scheme;

(b) making a transfer payment in respect of any of the benefits with a view to acquiring a right or entitlement to flexible benefits for the member or survivor under another pension scheme;

c) paying a lump sum that would be an uncrystallised funds pension lump sum in respect of any of the benefits."

Part 5 of the Transitional Provisions and Appropriate Independent Advice Regulations says: *"The trustees or managers are not required to carry out the check in section 48(1) of the Act if the total value of the member's or survivor's subsisting rights in respect of safeguarded benefits under the pension scheme is £30,000 or less on the valuation date."*

This meant that where a pension policy such as Mr W's included safeguarded benefits such as GMP, and the value of the policy was in excess of £30,000; the legislation required the existing provider to ensure that the policyholder had received appropriate independent advice on the implications of transferring such a policy. That advice had to be provided by an authorised independent adviser.

In his original submissions, Mr W said he was purchasing an annuity. But in his most recent conversations with the investigator, Mr W confirmed that he was transferring his Aviva pension into a personal pension with L. The transfer value of Mr W's policy in June 2021 was £47,724. As his policy has a safeguarded benefit, I'm satisfied that it didn't fall within the exemption provided for in Part 5 of the Transitional Provisions and Appropriate Independent Advice Regulations.

This means that Aviva wasn't wrong to require Mr W to obtain financial advice on the transfer as Mr W was intending to access his pension flexibly, by not taking benefits in the form of an annuity. Mr W has said that Aviva didn't give him a reason as to why he needed

to take advice. But I don't think that is correct. This is because the letter Aviva sent Mr W on 29 June 2021 which included the transfer forms, explained:

"As this policy has a valuable benefit, if the benefits are transferred out now rather than taking a retirement income using Aviva's retirement offering it is a legal requirement to get advice from a regulated FA (Financial Adviser). A FA will need to complete the enclosed form to confirm that they've given financial advice."

And it explained again to Mr W in its letter of 13 September 2021, why he needed to obtain financial advice. So, I'm satisfied Aviva did give Mr W reasons why he needed to take financial advice.

Summary conclusions

I've considered what Mr W said in response to my provisional decision. And I do understand that the process of taking benefits from his pension with Aviva has been incredibly frustrating and stressful for him.

As I've explained above, I do think that Aviva has caused significant delays in providing Mr W with his transfer documentation. But as I've also explained, I'm satisfied that it was appropriate for Aviva to require Mr W to obtain financial advice in respect of the transfer of his pension policy. And that the confirmation of advice form is as I understand the position, still outstanding together with the information needed to calculate his TFC.

Although Aviva has made mistakes and caused delays, ultimately the transfer hasn't been able to proceed without Mr W taking advice on his pension and the confirmation of advice form signed by a financial advisor, and then provided to Aviva. As a result, I don't consider that Aviva is responsible for any financial losses Mr W may have suffered in respect of his pension.

My final decision

For the reasons I've set out above, I have decided to uphold Mr W's complaint in part. If Mr W accepts my decision, I direct Aviva Life and Pensions UK Limited to pay him £1,000 (inclusive of any compensation payments it may have already paid to him) in respect of the distress and inconvenience he has been caused. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 March 2023.

Simon Dibble
Ombudsman