

The complaint

Mrs F complains that Aviva Life and Pensions UK Ltd caused unnecessary delays in the transfer of her pension to a new provider, causing her a financial loss.

What happened

Mrs F, with the assistance of her Independent Financial Adviser, (IFA), approached Aviva in February 2020 to discuss her retirement options. Her total pension fund value at the time was just over £460,000.

Part of Mrs F's pension was invested in a commercial property fund, and due to COVID restrictions at the time, Aviva weren't able to value the property in question. The fund was suspended, for trading purposes, on 20 March 2020.

Mrs F asked if she could partially transfer her pension – essentially leaving the 'property' investment with Aviva and transferring the rest. Aviva initially said this was OK, but soon corrected this – the terms and conditions of her pension prevented partial transfers. Aviva also sent incorrect fund value statements to Mrs F at around this time. Mrs F raised a complaint about this. Aviva accepted they'd sent incorrect information and apologised for this. They offered Mrs F £150 compensation for this mistake. But they repeated they couldn't undertake a partial transfer at this time. Mrs F's IFA continued to make enquiries with Aviva about when the property fund suspension would be lifted, and whilst transfer paperwork was provided to Mrs F, Aviva explained that no payment could be made until after the fund suspension had been lifted.

In October 2020, the suspension was lifted. Aviva advised Mrs F's IFA that, upon receipt of her signed transfer forms, the transfer process would take ten working days, plus a further three to five days for final clearance. Mrs F returned the signed forms, which Aviva confirms were received on 16 October 2020.

However, delays occurred, and the payment to Mrs F's new pension provider was only made on 13 November 2020. Aviva acknowledged this delay, saying "*we should have been in a position to make the transfer payment within our turnaround time of 10 working days*". Aviva confirmed they would carry out a loss assessment. £150 compensation was offered. But further delays occurred. Aviva advised before they could do the calculation they'd require more information from the receiving scheme. A further £100 compensation was offered.

Mrs F was unhappy with the delays, both in the transfer and also the loss calculation which by April 2021 still hadn't been undertaken, so she brought her complaint to this Service.

Our Investigator issued her view in January 2022 – when Aviva still hadn't calculated the loss assessment. Our investigator noted Aviva had quoted a 14-day turnaround for this assessment to be made. She said Aviva should complete the assessment as a matter of priority, providing a fixed timescale for this to happen. She also felt that Aviva's offer of compensation for distress and inconvenience (D&I), of £400 in total, was insufficient, and said Aviva should pay an additional amount of £400 because of the distress caused by the

extended delays in Aviva carrying out Mrs F's loss calculation, their lack of communication, and the payment of any loss into her pension that she remained entitled to.

Aviva responded, initially disagreeing (but subsequently accepting) that an extra £400 D&I should be paid, partly because they felt it was Mrs F's advisor that was experiencing the inconvenience of chasing this matter up. Instead, Aviva suggested adding 8% interest on the calculated loss. Our investigator responded, in summary disagreeing with this approach. She still felt an extra £400 D&I was appropriate and adding 8% interest to the loss wasn't the correct calculation method to use when assessing distress compensation.

In February 2022, Aviva completed the loss assessment, and sent Mrs F a cheque for £2,046 as settlement. Mrs F rejected this, believing Aviva had used incorrect dates in their calculations. Mrs F's IFA instead calculated the loss to be £12,967.81 and submitted this to Aviva for their consideration. Aviva rejected this, maintaining their calculation method was correct.

As no agreement could be reached, the case was passed to me to issue a Decision. And because I disagreed with what Aviva had proposed, I issued a Provisional Decision (PD) setting out my thoughts, and proposed resolution – which said as follows:

What I've provisionally decided – and why

Aviva accept they made mistakes and caused delays in the transfer of Mrs F's funds to her new provider. There is no dispute between the parties regarding this, and so I don't need to make a finding on this point. The issues that remain in dispute are essentially twofold – how much delay did Aviva cause, and what calculation method is appropriate to work out the loss Aviva caused.

The delay period:

Mrs F was initially prevented from transferring her Aviva funds to a new provider, because some of her funds were invested in a property fund. The COVID pandemic prevented Aviva being able to accurately value the properties in question. They followed FCA guidance to suspend any dealings with those types of funds until such time that certain COVID-related restrictions were lifted – which they were able to do in October 2020. I don't think these delays were caused by Aviva, and so I can't hold them responsible for any loss of transfer value during this 'restriction/suspension' period.

Instead, I need to look at what happened after the suspension was lifted. Aviva have explained they have a ten working day turnaround to process transfer applications of this type, plus an extra three to five working days for final checks and clearance. These are the timeframes I'd expect to see in a case such as this, and so I think they are fair here. However, the transfer took longer than this.

Aviva have confirmed they received Mrs F's signed transfer forms on 16 October 2020, and that her transfer should have taken place by 30 October 2020 (so, within ten working days). But it wasn't transferred until 13 November 2020 – ten working days later than it should.

Where a business has made a mistake, and a consumer has suffered a loss as result, we'd tell a business to take steps (as much as possible) to put the consumer back in the position they would have been in had the mistake not occurred. Here, that mistake involved a delay in Mrs F's funds being transferred, so I need to begin by looking at what would have happened had Mrs F's transfer taken place on 30 October 2020.

But I also need to take account of what happened after the transfer was made - here, the funds weren't invested by the receiving scheme until 24/25 November 2020 – so between seven and eight working days after the transfer took place. I don't know why they weren't invested immediately, but that's not something I need to know here. But I do need to take account of that seven/eight-day delay in working out fair redress. That further investment 'delay' occurred whilst the funds were with Mrs F's new pension company (and so not caused by Aviva), so it's fair I factor that in when telling Aviva what I think it needs to do

So, on the basis Aviva confirmed Mrs F's funds should have been sent to her new pension provider on 30 October 2020, they'd have been invested on either 10 or 11 November (the seventh and eighth working days after 30 October) – and that is the timeframe that I think is fair and reasonable to use here when deciding what the appropriate redress must be.

Loss calculation method

Whilst the calculation method used by Aviva in February 2022 is a fair one, I think Aviva has used an incorrect date as part of their calculations. They've calculated based on Mrs F's new provider investing her pension funds on 13 and 16 November, which are the tenth and eleventh working days after the funds were transferred. But as I've said above, Aviva have told us the new provider invested the funds on the seventh and eighth day after transfer, which would have been 10 and 11 November 2020 respectively, so this is the timeframe I'll be using here as part of my redress calculations.

I acknowledge Mrs F's IFA has proposed a different calculation method (resulting in a potential loss of £12,967), based on the performance between 17 October and 17 November of a particular fund. However, for the reasons I've outlined above, I don't think this approach is appropriate. It doesn't take account of the specific investments made by Mrs F's new pension provider, and so isn't particularly useful for like-for-like comparison purposes. Also, the 'delay period' that's been used assumes Aviva became liable for transfer delay losses on the day after it received Mrs F's transfer forms – which takes no account of the time Aviva would need to process and complete the transfer request in a timely manner.

Distress and inconvenience

Aviva have recently advised they agree to pay Mrs F the increased £400 D&I compensation our investigator recommended, in addition to the £400 in total previously offered. It's not clear whether all the initial £400 was paid, or if the 'recent' extra £400 has been paid. In any event, I agree with the extra compensation amount suggested by our investigator, and for the reasons stated. Whilst calculating compensation for distress isn't an exact science, I think £400 is a fair award in this case, and I won't be asking Aviva to increase it any further.

I also set out my recommended redress calculations, using the timeframes above. Both parties have responded to my PD, making various points which I'll now address.

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.

Aviva's response

Aviva questioned some of the dates I'd concluded should be used for redress calculation purposes. They said it wasn't appropriate to use 'reinvestment' dates based on the seventh and eighth-day timetable I'd suggested. They explained that, because of the delays they'd caused in processing Mrs F's transfer, they'd sent her funds to the receiving scheme using

Telegraphic Transfer (TT), which meant the funds were received by the receiving scheme within two hours. Had the transfer been made in the usual course of business, BACS would have been used, which takes three working days. As such, because the aim of redress should be to put a consumer back in the position they *would have been in* had the mistake not occurred (Aviva sent the funds on time, using the funds transfer method that would have been used), any calculation must include an allowance for the time an ordinary BACS transfer would have taken.

I think this is a fair comment, and one I accept in principle. The key point is that redress here (and in any complaint) must be based on what *would* have happened had the transfer proceeded smoothly. So, if Aviva say their usual funds transfer method is BACS (which I accept), that is the process that must be used in any calculation, because that is what *would* have happened. The use of TT was a one-off, to help speed up the delayed transfer process, which wouldn't have been used had the transfer happened on 30 October 2020. So, Aviva believe that it's fair to increase the redress calculation date by three days to take account of this – to Friday 13 and Monday 16 November 2020.

Mrs F's response

Mrs F begins by saying she believes her IFA sent the completed forms back on 11 October 2020. That may well be so, but I must assess the complaint based on when Aviva received the signed documents, because it's only then they would have been able to start processing her request. So, I'll continue to use 16 October 2020 as the 'start' date here. And on the basis Aviva agree they should have taken ten working days to process the request and make payment, I'll continue to use 30 October 2020 as the date when Mrs F's funds should have been transferred to the receiving scheme.

Mrs F also thinks Aviva transferred the funds on 17 November 2020, rather than 13 November 2020 as stated – having looked at the documents available I don't agree with this. I'm satisfied that Aviva 'sent' the money on 13 November 2020.

It appears not in dispute that the receiving scheme invested the funds on the seventh and eighth working day after they'd *received* the funds. But given what I've said above about the method the funds were sent by Aviva, it means I need to include those three extra 'BACS' transfer days when calculating the redress timeframe. What this means, in practical terms, is that Aviva should have transferred the funds on 30 October, and redress needs to be calculated based on the receiving scheme having invested these funds on the tenth and eleventh working days after receipt. Here that means the funds would have been invested on 13 and 16 November 2020 respectively. I note these were the dates used by Aviva in their original calculations (as their letter of 24 February 2022 to Mrs F's IFA confirms).

I appreciate Mrs F has spent a lot of time reviewing the sequence of events, after she'd received my PD. She has made various of comments about what she feels are the correct dates to use. I can assure her I've read and considered all of these. However, for the reasons I've set out above, I now think Aviva were right to use the transfer delay and 're-investment' dates that they did use. These reflect, as accurately as possible, what *would* have happened if Aviva hadn't caused any delays.

I think it's important to reiterate that, when someone brings a complaint to this Service and we think a business hasn't acted fairly or has made a mistake, we try to place that consumer back into the position they'd have been in had the mistake not occurred. Here, Aviva should have transferred Mrs F's funds to the receiving scheme on 30 October 2020. Had that actually happened, Aviva would have used their standard funds transfer process (BACS) which would have taken three working days. And we know that the receiving scheme did

take between seven and eight days to invest these sums. So, this timescale must be used here, meaning the receiving scheme *would have* reinvested Mrs F's funds on 13 and 16 November 2020.

So I think Aviva will now need to carry out a fresh calculation, using these dates, to arrive at a figure – as at the date of this final decision – so that an accurate and up-to-date loss amount can be ascertained.

Mrs F has asked, admittedly based on her own timeline calculation (which differs to the above) whether I think her IFA may have had some responsibility for any delays (and accordingly, fund loss). I can make no comment on that question. I am considering a complaint about Aviva's actions only.

Mrs F also suggested her compensation for distress be calculated as a percentage (8%) of what she felt her funds had lost. I disagree. We do sometimes award 8% interest in our decisions, but usually in circumstances where we feel a consumer has 'lost out' of the use of certain funds. It's a standard award that seeks to compensate for that loss of use. But it isn't a method we use to calculate compensation for D&I. Whilst calculating or assessing these awards isn't an exact science, we generally award fixed sums. Guidance on how we approach this can be found on our website.

Finally, Mrs F has advised that she wasn't a basic rate taxpayer at retirement, nor has she taken a tax-free lump sum. She also has no plans to take money out of her pension that would likely generate the need to pay tax. I acknowledge her comments.

When we award redress in these types of cases, we need to be mindful of potential tax implications. If an award can be paid into a consumer's 'new' pension fund, this is always the preferred option, and we'd always say a business should explore that option in the first instance. And if a payment can be made into a pension fund, then there are no tax issues to consider. It can be paid in as a total amount.

The problem arises where it's not possible for a business to pay the award to a 'new' pension company, and the award must be paid directly to a consumer. Generally, when someone starts drawing on their pension, they often take a tax-free sum, and are paid an income from the rest. And *usually* a person would pay tax on that income. It can't be predicted *when* that will happen, but the likelihood is this is what *will* happen at some point in the future. So, when a business has to make a payment direct to a consumer in these circumstances, we need to take that into account and apply a notional tax reduction. And the calculation I suggested in my PD, and which I repeat below, represents our standard approach in cases such as these. So, whilst I appreciate what Mrs F has advised relating to her circumstances now, I think the tax calculation element of the below redress is fair.

Conclusion

Having considered the information Aviva provided about the method of payment they *did* use, and also *would have* used had there been no delay, I'm now satisfied that Mrs F's receiving scheme would have reinvested her funds on the tenth and eleventh working day after Aviva transferred the funds. And it's fair that Aviva use those dates when calculating appropriate redress.

Putting things right

Fair compensation

My aim is that Mrs F should be put, as closely as possible, into the position she would now probably be in if Aviva had transferred her pension to her new provider on 30 October 2020. So, to compensate Mrs F fairly, Aviva must do the following:

- Calculate, if and as at the date Mrs F accepts this final decision, the notional current value of her current pension plan had her pension funds – using the values calculated on 16 and 17 October 2020 respectively, and which should have been transferred on 30 October 2020 – been reinvested in line with the approach taken by her new provider on 13 and 16 November 2020 respectively.
- Compare this value to the *actual* value of Mrs F's pension at the date of any final decision along these lines.
- If the notional value is greater than the actual value of Mrs F's pension, then Mrs F has suffered a financial loss and should be compensated accordingly. If the notional value is less than the actual value of Mrs F's funds, then there's no loss and no investment compensation is due.

The compensation should be paid into Mrs F's current pension plan. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Aviva is unable to pay the total amount into Mrs F's pension plan, it should pay that amount direct to her. But, had it been possible to pay into the plan, it would have eventually provided a taxable income. So, the total amount paid in this way should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mrs F's expected marginal rate of tax at retirement. I think it's reasonable to assume that Mrs F is likely to be a basic rate taxpayer at retirement, so the reduction would equal 20%. However, as Mrs F would have been able to take a 25% tax free lump sum, the 'tax' reduction should only be applied to 75% of the compensation, resulting in a fair overall 'tax' reduction of 15%.

And, Aviva must pay Mrs F a further £650 compensation for distress and inconvenience - £150 having already been paid – because of the delays it caused to her pension transfer.

Aviva should pay any redress due, whether into Mrs F's current pension or directly to her, within 28 days of being advised Mrs F has accepted this decision. If payment is not made within 28 days, interest must be added to the redress award(s) at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Aviva deducts income tax from this interest, it should tell Mrs F how much it has taken off. Aviva should give Mrs F a tax deduction certificate in respect of interest if Mrs F asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

My final decision

I uphold Mrs F's complaint against Aviva Life and Pensions UK Ltd, and require it to compensate Mrs F in the way outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs F to accept or reject my decision before 14 April 2023.

Mark Evans

Ombudsman