

## The complaint

Mr B complained that Aviva Life and Pensions UK Limited (Aviva) caused a significant delay in him being able to access his pension benefits. He says this delay caused a financial loss in terms of his funds remaining invested in holding funds during a time of increasing equity values and a missed opportunity to apply tax free cash to a property purchase while a stamp duty 'holiday' was in force. He would like Aviva to compensate him for these losses and the distress and inconvenience caused by this delay.

## What happened

Mr B held a pension policy with Aviva which allowed him on maturity to take a tax free lump sum and use the remaining funds to buy an annuity. If he wanted to take a tax free lump sum and either enter drawdown or leave the remaining funds invested, he would have to transfer his benefits into a new policy, either with Aviva or a third party.

Mr B was already over 60 years old at this time. The age of 60 had been originally selected as his retirement date, but when this passed with no confirmation from Mr B that he wished to take benefits at that time, a new retirement date of his 65<sup>th</sup> birthday was applied to the policy by Aviva.

At some time before December 2020, Mr B transferred the pension benefits he held with Aviva into a holding fund as, in his words, he *"was concerned that world stock markets were at 'highs', and I wanted to preserve the value of my fund and to avoid any potential sharp falls before potentially making transfers/withdrawals"*.

On 20 December 2020, Mr B wrote to Aviva to ask about his options for taking tax free cash from his policy and investing the remaining funds into other investments. Aviva has no record of this contact and did not reply.

Mr B also began a similar process with a pension policy he held with Standard Life, transferring from an older Standard Life policy to one allowing him to enter into drawdown and take a tax free lump sum. The process with Standard Life completed within 10 working days of the transfer instruction being given. Mr B took out a proportion of these funds in tax free cash and reinvested the remainder. Mr B has provided evidence that following this transfer, he split his investment funds equally between the following:

- ASI World Income Equity Pension Fund,
- Baillie Gifford UK & Worldwide Equity Pension Fund,
- Blackrock ACS World Ex UK Equity Tracker Pension Fund
- HSBC Islamic Global Equity Index Pension Fund
- Standard Life 2010 Overseas Tracker Pension Fund

Mr B contacted Aviva again to follow up on his letter of 20 December on 11 February 2021. He was informed that the full transfer value of his benefits could be paid into a new policy, with no deductions. Mr B subsequently emailed Aviva on 16 February stating that he wished to transfer to a new policy which would allow him to take a tax free lump sum and leave the

remaining benefits invested. He was asked by Aviva to telephone or use the online application process.

Mr B called Aviva on 17 February 2021 to begin this process. During this call he was incorrectly informed that he would lose 40% of a loyalty bonus that applied to his policy. This reduction only applied to benefits taken or transferred before his original retirement date, which had already passed. The call handler further explained that if Mr B waited until after his 63<sup>rd</sup> birthday, the bonus reduction would only be 20%. This incorrect information was also repeated in an email to Mr B on 22 February.

Given this erroneous information, Mr B decided to wait until after his 63<sup>rd</sup> birthday to transfer benefits into the new policy. He contacted Aviva again on 20 April and was told that he would need to apply for the new policy online, but that he wouldn't in fact lose any of his loyalty bonus. Mr B began the online process but ran into difficulties and rang Aviva to ask for assistance. He was again told he needed to complete the online process but was again unable to complete it and he subsequently abandoned the application. In total, he made 2 phone calls and 4 attempts to complete the form online on 20 and 21 April.

Experiencing long delays when trying to contact Aviva by phone, Mr B wrote to Aviva on 21 April to complain primarily about the difficulty he encountered with the online application and the contradictory and erroneous information regarding the loyalty bonus and the poor service he had encountered. In his complaint, he detailed the specific difficulty he had encountered when trying to complete the online application.

Receiving no substantive response to his complaint, Mr B wrote to Aviva again on 2 June and 18 August 2021 reiterating his complaints and his dissatisfaction that his transfer had still not taken place.

Mr B also complained about the effect this delay in transferring and accessing his tax free cash has had on his financial plans. More specifically, that his funds had remained in a holding fund and had missed the opportunity to increase in line with financial markets, as well as his intention to help his son to purchase a property to take advantage of the stamp duty 'holiday' that had been in place.

Aviva wrote to Mr B on 30 April, 19 May, 11 June, 15 July and 13 August to either acknowledge the complaint or to inform him that it was still looking into it.

As he had received no final response to his complaint within 8 weeks, Mr B complained to the Financial Ombudsman Service on 12 August, and informed Aviva he had done so.

Aviva eventually responded to Mr B's complaint on 27 August 2021, when it explained the mistake it had made relating to the loyalty bonus, and that no deductions should have applied. The letter made no offer of compensation either in relation to Mr B's distress and inconvenience or his claimed financial losses (which it didn't address). But it did say he could speak to its specialist team to assist him with the online application that he had been unable to complete himself, providing him with a phone number to do that. Mr B received this letter on 4 September 2021.

Mr B responded to this letter on 8 September 2021, restating his dissatisfaction that his complaint had taken over four months to receive a reply, asking for compensation for his claimed financial loss and asking for assistance in transferring his funds to a new policy. Mr B also reminded Aviva that he had complained to this service.

Our investigator reviewed all the evidence provided by both parties and came to the view that Aviva had indeed caused a delay to Mr B's transfer request and suggested a form of

redress to compensate Mr B for the delay it had caused and the sum of £250 in respect of the distress and inconvenience Mr B had suffered. The view also proposed defining the limit of the delay Mr B had suffered as being between 17 February 2021 and 13 April 2021 as the investigator felt that he could have mitigated the losses he suffered to some extent.

Following the investigator's view being shared with Mr B and Aviva, Mr B decided to transfer the policy he held with Aviva to Standard Life, which he has been able to do. Both parties responded to the investigator's view, disagreeing with elements of it and asking for an Ombudsman to provide a final decision on this case. The case has now been passed to me to review all the evidence and make a final decision.

I issued my provisional decision in February 2023, the relevant parts of which are reproduced below and forms part of my decision:

*"I intend to uphold this complaint, but my reasons and conclusions aren't quite the same as our investigator's, so I think it is fair to explain that to both Mr B and Aviva and give them the chance to respond before I make my final decision. I shall explain my reasoning here. Overall, I think that it is reasonable to conclude Aviva is responsible for causing a significant delay to what should have been a relatively straightforward request from Mr B to transfer his benefits to a new policy to allow him to take tax free cash from his policy and reinvest the remainder.*

*This delay originally arose from Aviva's lack of response to Mr B's original enquiry of 20 December 2020. I accept that Aviva has no record of receiving this letter, but as Mr B has been able to provide a copy of it I think it's reasonable to assume that he did indeed send it to Aviva. The delay was then compounded when Mr B spoke to Aviva on 17 February, to begin the transfer process, having been correctly informed the previous week that there would be no deductions made to the value of his policy as a result of the transfer. During the call on 17 February he was incorrectly informed that taking his benefits before April would result in a 40% reduction in the loyalty bonus he was due on his policy. As a result of this incorrect information, he reasonably decided to wait until after his 63<sup>rd</sup> birthday, to reduce the level of the deduction. I find it reasonable to conclude that the responsibility for the delay in transferring Mr B's policy up to 20 April 2021 is a result of him being provided with this incorrect information. In terms of establishing the date when this delay began, I think it reasonable to consider that Aviva would likely have responded to Mr B's letter of 20 December by 31 December, and Mr B to have sent his email requesting the transfer to go ahead 3 working days later, on 6 January 2021. Assuming the application form could have been completed immediately on 7 January and the transfer completed within 10 working days, I find it reasonable to conclude Mr B would have reinvested his funds on 21 January 2021.*

*I now must turn to the delay that occurred as a result of the difficulties Mr B encountered when trying to transfer his existing policy to a new policy using the online application form. I have to decide whether Mr B was unable to complete the form as the result of Aviva doing something wrong.*

*Essentially, this element of the complaint stems from Mr B's contention that Aviva further delayed his transfer by not providing him with help to complete the online form. He was informed in a telephone call on 20 April that he would have to complete the application for the policy online, but he struggled to do so as he was unsure of how to complete some of the information requirements. The form asked Mr B to give the age at which he wanted to retire and take his benefits, which he found confusing as he was already retired and the form would not accept a date which was in the past. He wanted to take his benefits immediately and was concerned that if he gave a later age this would not be possible. The call handler*

*had offered to stay on the line while Mr B completed the application, but he declined the offer before encountering the difficulty.*

*Mr B wrote to Aviva on 21 April to complain about the poor service he had received and to provide details about the issues he had encountered when trying to complete the online application in his letter of complaint.*

*Aviva did not use the information Mr B provided in his complaint to either assist him in completing the online application or explain to him how he could do it himself in any of the communications it sent to him while his complaint was being investigated. Aviva wrote to Mr B on 19 May 2021 to provide him with a scheduled update, a letter which included the following:*

*“thank you for your patience whilst we investigate your concerns.”*

*Mr B wrote to Aviva on 2 June again highlighting that he had not had a response on his problems making the online application, and clearly indicating that he considered action to enable him to complete the online form as a separate issue to resolving his complaint, stating:*

*I will now expect some form of contact from you within the next 14 days which enable me to:*

- 1. Move my funds in their entirety to a new plan*
- 2. Withdraw the 25% tax free element*

*And I will then expect to hear further from you with regard to my complaint.*

*Aviva responded on 11 June to inform him of the progress on assessing his complaint, but made no concrete offer of assistance with completing the online application:*

*We have contacted you to advise your complaint is being reviewed. Sorry we haven't been able to give a decision yet. We hope to be able to provide a decision as soon as possible.*

*Aviva provided Mr B with more reassurance that his issues could be resolved when it wrote to him on 15 July, saying:*

*We do appreciate your patience. We are currently reviewing your complaint to provide an outcome.*

*Aviva did not provide Mr B with any information relating to his problems with the online application until he received the final response to his complaint on 27 August when this aspect of his complaint was covered simply by asking him to call Aviva's specialist team.*

*I recognise that firms have eight weeks to deal with complaints and that there's a requirement to acknowledge the complaint and keep complainants informed about progress. Although Aviva took substantially longer to respond to Mr B's complaint, it did send Mr B regular updates about the progress of his complaint, so it could be argued that Aviva was within its rights to not substantively respond to the element of Mr B's complaint that described his difficulties with the online form any earlier than the rest of his complaint. Having said that, I also think it's important to keep an eye on the bigger picture here, and look at this in terms of The Financial Conduct Authority's (FCA) Principles for Businesses, most pertinently:*

- Principle 2 (A firm must conduct its business with due skill, care and diligence)*
- Principle 6 (a firm must pay due regard to the interests of its customers)*

- *Principle 7 (A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading)*

*I consider that these principles are relevant to this case and form a key part of the regulatory framework that companies such as Aviva operate in. In essence, I have to consider whether Aviva treated Mr B fairly by not providing him with a response to the difficulties he had specifically outlined when trying to complete the online form.*

*In this particular circumstance, Mr B was very specific about what he wanted to happen. And it would have been extremely simple in this particular case for Aviva to have moved things forward for Mr B by either helping with the particular problem he was facing with his online application or, if that wasn't feasible, pointing him to the specialist team (as per its final response letter) or telling him to explore other options such as taking out a policy via an IFA or transferring to another provider. Aviva would also have known that it had previously given Mr B erroneous information that had already caused significant delays in him taking action. So I think just considering this through the prism of a complaint investigation is missing the point somewhat here.*

*I think it's fair and reasonable to say Aviva could have moved things forward for Mr B one way or the other far sooner than it did. But it needed to get to grips with the issue at hand - which I think it reasonably should, and could, have done quickly - rather than just treat it as a complaint issue. With the FCA's principles in mind, I think Aviva fell short here and didn't treat Mr B fairly.*

*I have also considered very carefully whether Mr B should have acted to mitigate any effect of his remaining invested in the holding fund during the period while he was waiting for Aviva to respond to his complaint. I consider that a mitigation in terms of expecting Mr B to incur dealing and spread costs by reinvesting temporarily into equity based funds within his existing policy would have been unreasonable. Having said that, I also think it's reasonable to expect that Mr B should have concluded at some point that he needed to do take some action, most likely the action he eventually did take by transferring his policy to a new provider. After this point it wouldn't be fair to hold Aviva responsible for Mr B's actions. Putting a date on that point is difficult. But I think that 6 September 2021, the first working day after he received Aviva's final response letter to his initial complaint is a reasonable tipping point between Mr B reasonably expecting Aviva should be able to resolve the issue and the realisation that it had done all it was ever going to do.*

*I find that this date is also appropriate as although Mr B's complaint took longer than eight weeks to respond to, Aviva wrote to him on three occasions prior to sending the final response to reassure him that they were looking into his complaint – I think it reasonable that he did not chase Aviva more proactively or take any mitigating action during this period as he had received those assurances.*

*Consequently, I find it fair and reasonable to hold Aviva responsible for any loss that Mr B may have suffered during this period. I shall come on to the issue of how Aviva should put things right for Mr B in this respect, but I also believe it is reasonable to assume that he would have done something different with his funds rather than keeping them invested in the holding funds. I think it's fair and reasonable to assume that he would have followed a similar investment strategy to the one he used with Standard Life reinvesting his funds, and that should be the basis of any loss calculation.*

*In terms of the other element of Mr B's claimed loss, the missed opportunity to use the tax free cash to help fund a child's property purchase during the stamp duty 'holiday', while I accept that Mr B has provided evidence that he carried out a similar transaction for another child through a pension policy, I do not intend to uphold this element of the complaint.*

*Whilst I accept buying a property may have been part of Mr B's thinking to begin with, I don't think I can reasonably conclude that a property would have been purchased given the greater uncertainties in that kind of transaction. And even if a property would have been purchased, I can't reasonably conclude what property would have been purchased, what its purchase price would have been, when it would have been purchased and what returns (if any) would have followed. In the circumstances, I don't think it would be fair and reasonable to make any assumptions in relation to a property purchase. That said, my redress formula below takes the view that Mr B wouldn't have remained in a holding fund but would have been invested in the financial markets instead. So my redress does assume Mr B's entire pension fund would have been put to better use than it was. In the circumstances, I think this is a fair and reasonable approach to compensating Mr B."*

Mr B responded and said that he was happy to accept my provisional decision.

Aviva also responded, accepting my decision, but indicated that it was having difficulty identifying the specific funds Mr B had invested in with Standard Life. Mr B was able to provide further evidence relating to these funds, which was passed to Aviva. He also offered to provide any further information Aviva required and provide any necessary permissions for Standard Life to provide any relevant information direct to Aviva.

### **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 decision to uphold this complaint remains the same as set out in my provisional decision, and for the same reasons.

Essentially, no new material points have been made that persuade me to change my decision. I'm satisfied that the key points remain the same and have been considered by me in my provisional decision.

### **Putting things right**

My aim is that Mr B should be put back as closely as possible into the position he would probably now be in if the transfer had taken place without the delay which I find is attributable to Aviva. I find for the reasons given above that the period of that delay for the purposes of this calculation should be between 21 January 2021 and 6 September 2021, the first working day after receiving the response to his complaint of 21 April.

I'm also satisfied that this matter will have caused Mr B considerable distress and inconvenience over a prolonged period. I agree with our investigator that £250 is a fair and reasonable amount for this.

I think Mr B would have invested differently. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr B's circumstances and the investment strategy he used when investing the funds held by Standard Life.

To compensate Mr B fairly, Aviva must:

- Compare the actual performance of Mr B's funds during the calculation period with the notional value if they had been invested equally (20% each) in each of the investments listed below.

- ASI World Income Equity Pension Fund,
- Baillie Gifford UK & Worldwide Equity Pension Fund,
- Blackrock ACS World Ex UK Equity Tracker Pension Fund
- HSBC Islamic Global Equity Index Pension Fund
- Standard Life 2010 Overseas Tracker Pension Fund

If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Aviva should add interest as set out below to the compensation payable.
- If there is a loss, Aviva should pay into Mr B's pension plan to increase its value by the amount of the compensation and any interest. 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 compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mr B £250 in respect of distress and inconvenience.

Income tax may be payable on any interest paid. If Aviva deducts income tax from the interest, it should tell Mr B how much has been taken off. Aviva should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Aviva SIPP	No longer exists	Notional value had Mr B transferred in line with his preferences as of 21 January 2021	21 January 2021	6 September 2021	8% simple per year on any loss from the end date to the date of settlement

If the information about the funds listed above is not available, Aviva shall use the benchmark of the FTSE UK Private Investors Income Total Return Index.

### **Actual value**

This means the actual amount payable from the investment at the end date.

### **Notional value**

This is what the investment would have been worth at the end date had it produced a return

using the comparison with Mr B's investment strategy with Standard Life or the benchmark.

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

- Mr B's approach to investing his pension funds is evidenced by the approach he took with the investments he made with Standard Life at a similar time to the investments he wanted to make with Aviva.
- As an alternative, the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr B's circumstances and risk attitude.

### **My final decision**

For the reasons given above, I uphold the complaint. My final decision is that Aviva Life and Pensions UK Limited should pay the amount calculated as 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 13 April 2023.

Bill Catchpole  
**Ombudsman**