

## The complaint

Mr M complains that Aviva Life & Pensions UK Limited delayed the transfer of five pension plans to a self-invested personal pension ('SIPP'). He says he's lost out on investment growth as a result.

## What happened

In early 2021 Mr M undertook to transfer his five existing pensions with Aviva to a SIPP as he was approaching age 75 and didn't wish to take his pension funds yet. Aviva received the transfer instructions on 13 January 2021. There were delays in completing the transfers such that they took place on the following dates:

- Policy A - PM42135884 on 21 January 2021
- Policy B - PW56073943 on 27 January 2021
- Policy C - 89821884 on 15 February 2021
- Policy D - 89985399 on 1 April 2021
- Policy E - 89837169 on 1 April 2021

Mr M complained about the time taken to complete the transfers, saying he'd lost the opportunity to invest his funds in his SIPP sooner and as such, had lost out on investment growth.

In May 2021 Aviva wrote to Mr M, accepting it had caused delays and agreeing that the transfers of policies C, D and E ought to have completed by 25 January 2021. So, it added late payment interest to the transferred sums and also said it would complete a loss assessment to check he hadn't suffered any financial detriment. Aviva explained it would contact his SIPP provider to establish how he'd invested his funds once the transferred funds had been received. It also offered Mr M £200 for the inconvenience and upset caused.

Mr M acknowledged this and asked for a breakdown of the transferred funds, which he said he needed before he could make any investment decisions in his SIPP.

In June 2021 Aviva also sent Mr M a cheque for £125 after it found it had made a mistake in respect of policies A and B. But it noted that the transfer of both policies had been completed within its service level agreements, so no loss calculation would be carried out. Aviva also sent a breakdown of the funds transferred for policies C, D and E.

In November 2021 Aviva wrote to Mr M again to explain it had completed the loss assessment and determined he'd suffered a loss of £12,811.52 (after deducting the late payment interest). It said it noted Mr M hadn't actually made any investments until June 2021, but taking account of the delay it thought he would've most likely invested the funds on 14 April 2021.

Aviva sent the funds representing the lost investment growth to Mr M's SIPP on 17 December 2021. Mr M received further compensation of £200, offered in respect of the time taken to complete the loss calculation.

Mr M ultimately didn't accept what Aviva had offered in response to his complaint. So, he referred the matter to our Service. He thought Aviva had offered to carry out a loss assessment based on all five policies having been transferred on 25 January 2021. Instead, it had only considered policies C, D and E. Mr M said he had wanted to invest all of his monies in a lump sum and not in a piecemeal way. He also didn't think it was fair to deduct the late interest as he considered this was compensation for the delay, whereas the loss calculation was based on the loss of investment growth. Mr M also thought the compensation of £525 that he'd received so far should be increased significantly given the time taken to sort everything out.

Our Investigator didn't think she could fairly hold Aviva responsible for the delay in Mr M waiting to receive all of the funds and the breakdown of them before making his investment decisions. She noted that Mr M had in fact made his investment decisions before he received the breakdown of the funds. The Investigator thought Aviva had used the correct dates to work out the investment loss on policies C, D and E. And she thought the £525 offered was reasonable compensation for the distress and inconvenience caused. However, she noted that the transfer of policy B had taken place on 27 January 2021, and ought to have been transferred on 25 January 2021 instead. So, she thought Aviva should carry out the same loss assessment in respect of policy B, deducting the late payment interest it had added.

Aviva accepted the Investigator's view. While Mr M agreed that Aviva should be required to include policy B in the loss calculation, he still thought Aviva should not be allowed to deduct the late payment interest from the settlement. He also thought that Aviva should be required to use unit prices from January 2021 when the market conditions were more favourable. Mr M added that he was able to invest his funds on 24 June 2021 as he had been able to get the details he required from Aviva over the phone and he'd requested those details on 22 February 2021 so should've had them far sooner. He still thought the compensation should be increased.

The Investigator considered Mr M's points. She thought the compensation offered (£525 in total) was reasonable. But she agreed with Mr M that Aviva had delayed sending him the fund details and he ought reasonably to have had this by 1 March 2021. She noted that Mr M had made his investment decisions 22 days after receiving the fund details from Aviva, so thought this timeframe should be applied to the loss calculation instead. Meaning that she thought Aviva should carry out a loss calculation, for all five policies, based on him having invested the funds on 23 March 2021. She maintained that it was reasonable for Aviva to deduct the late payment interest from its calculations.

Although Mr M was happy with the new basis for the calculation he maintained his earlier view in respect of the compensation and the late interest – referring to a decision from the Pensions Ombudsman in support of his position. Aviva accepted the Investigator's view. After carrying out the loss assessment, Aviva calculated the redress to be £38,924.11. It also offered an extra £200 in recognition of the time taken to reach a final settlement figure in respect of the investment loss. Mr M accepted the extra compensation payment but still felt it wasn't fair for Aviva to deduct the late payment interest from the loss calculation. He suggested an overall compensation figure which he believed to be fair. However, Aviva thought it had already paid sufficient compensation.

As no agreement could be reached, the complaint was referred to me to make a final decision.

### **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'm upholding the complaint for largely the same reasons given by the Investigator.

Aviva ultimately accepted the Investigator's view on the matter and overall, I think the compensation provided, including the settlement offered for the investment loss Mr M experienced, is fair and reasonable in the circumstances. This means that I'm not making any further award here, which I acknowledge will come as a disappointment to Mr M, but I'll explain why.

For the sake of clarity I should say there's no dispute here that Aviva caused delays and that these delays had an impact on the investments Mr M made through his SIPP. Both Mr M and Aviva agree with the Investigator's view that had the delays not occurred, Mr M would've been able to invest his funds in the SIPP on 23 March 2021. And an investment loss calculation carried out on this basis shows a loss of £38,924.11 (after deducting the late payment interest previously sent to Mr M).

Mr M accepted that this figure was correct – however, he still thought deducting the late payment interest was unfair. And he feels Aviva has muddied the waters on this issue given it paid him late payment interest of £331.95 – which represented 8% from the date of the calculation on 30 November 2022 to the date of settlement on 26 January 2023. He thinks that means Aviva should've also added late payment interest to the sum it paid him on 17 December 2021, given it was calculated in November 2021. This is Mr M's remaining main concern, so I've considered whether it was fair and reasonable for Aviva to deduct the late payment interest when it carried out the loss calculation in November 2022.

It is important to note that Aviva's method for calculating investment loss looks to put Mr M in the position he would have been in if not for its delays. That is why it has compared the value of Mr M's SIPP based on his investments having been purchased on 23 March 2021 with the actual value. And I think that is a fair way of putting things right here.

An alternative method of putting things right would be to provide late payment interest at 8% on the sum transferred from the date it ought to have been transferred to the date of settlement. But that would only usually be appropriate if it wasn't known what Mr M would've done with his funds, or if it was simply being paid to him as cash. However, in this case we know that Mr M's funds were sent to his SIPP, where he invested them. So, I don't think it was unfair for Aviva to deduct the late payment interest it sent to Mr M when it carried out the loss calculation in November 2021. That's because it wouldn't be fair or reasonable for Mr M to receive both compensation for investment loss and late payment interest as they are both methods of compensating for the same loss.

Mr M says that this isn't consistent with the Pensions Ombudsman's approach following the High Court's ruling in *Tenconi v James Hay Partnership* [2019] 6 WLUK 162. In that case the Pensions Ombudsman awarded the complainant investment loss and required the business to add interest to this amount at 8%. He feels he should benefit from the same.

I should explain that I am not bound to follow the ruling of a court or another Ombudsman service, although it is something I can take into account when determining what is fair and reasonable in all the circumstances of Mr M's complaint. However, having considered the Pensions Ombudsman's decision in that case I don't think that Aviva's approach to Mr M's complaint is inconsistent with it. That's because the reason the Pensions Ombudsman added interest at 8% to the complainant's investment loss in that case was because it only determined the complainant's investment loss up to August 2016. Interest at 8% was added thereafter to compensate the complainant for the loss of use of that money to the date of the

decision in August 2020. The compensation Aviva has offered to Mr M compensates him for his loss to date – so it is evident Mr M has been compensated for the full extent of his loss.

I appreciate that Mr M feels Aviva's award of late payment interest in January 2023 is inconsistent with its previous approach. However, this interest was added to take account of the fact that the loss calculation was only done to take account of Mr M's loss up to 30 November 2022 but wasn't settled until 26 January 2023. This essentially ensured Mr M was compensated for the entire time that he was waiting for the investment loss to be added to his SIPP. I don't think that means Aviva should have added late payment interest to the sum it paid him in December 2021. That's because when Aviva calculated the loss in November 2022, this took account of the entire period during which his funds should've been invested and it simply deducted the sum it paid Mr M in December 2021. So, overall, I'm satisfied Aviva has compensated Mr M fairly for his investment loss.

Aviva also paid Mr M a total of £725 to compensate him for the distress and inconvenience the matter had caused him. Mr M has accepted this. But for completeness, I think this sum is fair compensation overall for the impact of the delays on Mr M, particularly given he's been compensated for the financial impact of the delay on his investments in his SIPP.

In summary, I think the compensation Aviva has offered and paid to Mr M in settlement of his complaint is fair and reasonable in the circumstances. Mr M has confirmed receipt of the full amount of compensation awarded. So, I'm not making any additional award here.

### **My final decision**

For the reasons set out above, I'm upholding this complaint. But as Aviva Life & Pensions UK Limited has already paid Mr M fair compensation in settlement of this complaint, it does not need to do any more to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 May 2023.

Hannah Wise  
**Ombudsman**