

The complaint

Mr W says Aviva Life & Pension UK Limited wouldn't allow him to take his pension benefits in the way he wanted from his existing pension. And that it was responsible for him receiving a reduced transfer value and therefore less tax-free cash (TFC) than he had expected.

What happened

I am grateful to the respondent for explaining that different entities have been involved with Mr W's case. Nonetheless, that isn't a matter that unnecessarily complicates his journey. I say this because both firms are closely connected. And Aviva Life & Pension UK Limited has accepted responsibility for the matters which are at the heart of his complaint. For simplicity, I'll refer to Aviva throughout my decision.

From listening to the phone conversations Mr W has had with this Service, I understand that he was interested in taking tax-free cash (TFC) from his personal pensions. He contacted Aviva in June 2022 about a month prior to turning 55.

There's now broad agreement between the parties about what happened. The following abridged chronology of events recorded by the firm is instructive:

9/2/2022 – Yearly statement sent to [Mr W] ...fund value on 30 January 2022 £306,389.38.

21/3/2022 – [Notification sent to Mr W]. Estimated pension fund at 9 July 2022 £302,968.82.

16/5/2022 – non-contact letter sent to [Mr W] ...Estimated pension fund valued on 9 July 2022 £281,610.90.

9/6/2022 – Mr W called to take 25% TFC.

11/6/2022 – Premium expiry letter sent to Mr W - As part of our commitment to keeping customers informed we wanted to let you know that the premium payable on your plan is due to stop. When the plan started, you agreed to pay the premium for a set period of time. In line with the policy conditions, although the premiums are due to stop, the policy will continue to provide cover until the term of the policy expires on 9 July 2042.

17/6/2022 – Transfer claim set up. Origo request received.

20/6/2022 - Please check fund drop is more than 5%

21/6/2022 - Fund drop is more than 5% hence email sent to [individual/team at Aviva] and awaiting reply. Previous Value Current value Fund drop % Need to call...Yes.

21/6/2022 -Thank you for contacting us regarding the transfer of Mr W's pension policy. We have received all our requirements to transfer the funds. However the approximate transfer value mentioned on Origo options does not add up to the value of policies requested. As per Origo options the requested approximate transfer value for policies...are 288,451.41 and we have the current transfer value as 267,322.16 dated 17/06/2022.

There is a fund drop of 7.32%. The transfer amount is not guaranteed, as this dependent on the market performance of the funds invested. You could receive more or less than the amount shown. Could you please check with Policyholder and confirm whether he is happy

to proceed with the transfer. Once we receive the confirmation on this we will be in a position to deal with this request.

21/6/2022 – Email from XXX myinvestmentportfolio@aviva.com - The customer is happy to go ahead with this based on the drop.

23/6//2022 - Transfer date:23/06/2022...Transfer value dated 17/06/2022: 267,322.16.

24/6/2022 – Transfer of pension benefits letter sent to PH. We are pleased to confirm that we have made a payment of £269,732.92 for a transfer of pension benefits from the above plans to Aviva...

30/6/2022 – Call - Customer called wanting to discuss the loss in funds since he transferred his policies into a SIPP. Managed by different dept so gave telephone number.

1/7/2022 – Complaint logged by Aviva. The customer is unhappy with the upgrade process. He feels he has been scammed as the fund value dropped so much and he says he was not told this could happen. He is also cross this was the only option to withdraw his money. Frustrated, angry and has asked about how to escalate the complaint higher.

Aviva responded to Mr W's complaint on 1 September 2022. It addressed his main concerns in the following terms:

"You're unhappy your chosen retirement option wasn't available directly through your policies. Your policies started in 1989 & 1994, retirement options were limited to an annuity or in some cases as a cash lump sum. In 2015, the government introduced more retirement options, including drawdown and partial lump sums. Due to the terms and conditions of the older contracts, it wasn't possible to make the options available to all plans. For the restricted policies, the way around this is to transfer to a new pension plan..."

"Your fund value dropped in between January 2022 and the date of transfer. Your policies were invested in the Aviva Pension Investment Trust Portfolio T LMP fund. Investment funds are linked to the stock market and the value will fluctuate on a daily basis. You had the option of switching to alternative funds. We'd always recommend seeking independent financial advice before making any changes. We issue statements each year as a reminder to review your policy and make any necessary changes. Within the fund value section, it states "Please remember the value of the funds can go up or down.""

"Your policies had both Accumulation and Capital units. On 30 January 2022 the Accumulation unit price was 158.662 and the Capital units were 24.34. On the date of transfer, the Accumulation units had an individual price of 139.143 and the Capital units were 21.346. The drop in unit price is the reason your fund value dropped over this time period."

Mr W brought his complaint to this Service. An Investigator upheld his case. He found that he would've needed to switch to another pension in order to access his benefits. But he also discovered that although Aviva had initially asserted it had informed him the transfer value had fallen significantly between its last communication and his transfer request, and enquired whether he still wished to proceed, as recorded in its chronology of events, it's now confirmed this didn't happen.

After speaking to Mr W the Investigator said:

"Because of this Mr W wasn't given an opportunity to make a fully informed decision, and based on discussions I have had with him I am of the opinion that had he been asked he would have delayed the transfer until the pension performance had recovered."

Aviva disagreed with the Investigator's conclusion. It said a letter it had sent him on 24 June, two weeks before his birthday, should've put him on notice of the fund value. But he still went ahead with the transaction.

As both parties couldn't agree with the Investigator's view, Mr W's complaint has been passed to me to review afresh. I issued my provisional decision last month. I've considered the further submissions provided by both parties in arriving at this 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr W's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by Aviva for Mr W. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to 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.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr W's complaint.

Considering Mr W's first complaint point about the lack of flexibility to access his pension benefits through his then existing personal pensions. I understand his frustration here, but I would note that pension freedoms were provided under 'enabling' legislation only. That means providers didn't have to offer any further flexibility by law if the rules of the consumer's policy didn't already allow an option such as drawdown. Firms weren't compelled to change existing schemes because the nature of pension contracts requires long-term asset and liability planning.

With regard to Mr W's disappointment at the transfer value of his pension. He's focussed in his submissions on the difference in value between his pension in February 2022, when it was around £306,000, and the value he was informed about at the end of June 2022 of about £270,000.

The request to move Mr W's pension was made through the firm's Origo system on 17 June 2022. This recorded the value of his fund as £288,500. But the firm spotted his pot had further eroded in value and was now worth around £267,300. Because the value had fallen by over 5% it should've contacted him to enquire whether he still wished to proceed.

Aviva accepts when Mr W initiated the transfer, it should've checked with him that he still wanted to proceed given the fall in the value of his fund. While it recorded this had been done and that he'd agreed to continue, this wasn't true. This is a serious failing.

In rejecting the Investigator's suggested approach on redress, Aviva said:

"I have attached a letter that was sent to the customer on 24 June, confirming the transfer of his funds to our SIPP. This confirmed the value of the plan at the time. This was two weeks prior to Mr W's 55th birthday. The funds were received into the plan on 29 June, though it would not be until 9 July that any monies could be withdrawn..."

"...As this letter was sent, and there was sufficient time to receive it, I believe the customer was aware of the drop before his 55th birthday, and well before our delay. Since the funds were received, the plan had increased in the SIPP from received date, to birthday, to paid date, and now to today. I wouldn't look to cover any difference before his 55th, as this would never have been accessible, though I fully agree that we should have contacted to see if the customer wanted to proceed."

The problem for Aviva is that its own chronology of events shows that Mr W made contact with it on 30 June 2022 and 1 July 2022 to express his concern about his fund value. But I can't see that even at this stage it sought to put a hold on the transaction.

So, all that remains is for me to decide how to put matters right for Mr W.

Putting things right

The purpose of redress is to put Mr W back into the position he'd have been in now, or as reasonably close to that as possible, had it not been for Aviva's failings.

But redress isn't always a scientific matter. The proposal I make to assess any financial detriment won't be perfectly satisfactory to either party. I'm conscious of the need to avoid the benefit of hindsight. However, I believe my proposals are fair and reasonable in the circumstances.

Mr W has said if he'd been informed about the reduced value of his pension pot prior to it being switched he wouldn't have proceeded. I can understand why he says this, but I'm not persuaded he would've waited for his funds to recover their January 2022 value.

I say this because I've listened to the phone conversations Mr W has had with this Service. He was interested in taking tax-free cash from his personal pensions when he reached 55. He mentioned he had a serious health condition and this was why he wanted early access to some of his benefits.

While it's possible he would've held off from making the switch for some months to see how markets moved, I think it's unlikely he'd have decided to wait too much longer. He'd have no way of knowing for sure whether the fund value was likely to increase or decrease, and by how much, in the coming months and years.

The fund value he received in July 2022 was £272,900 and he took 25% as TFC. I note by January 2023 the equivalent value of his funds would've been £274,400. So, that's an increase of £1,500, or 0.55% in just over 5 months. In terms of TFC that equates to an additional £375.

I also have to consider Mr W has had the benefit of the £68,225 TFC to use as he wished since July 2022. It's difficult to put a value on the opportunity that's given him or the value

he's derived. But he's confirmed the money was used to pay off his mortgage and to give his wife some security.

We do know inflation is currently running at levels not seen for over 35 years. For example, the consumer prices index in February 2023 was around 10.4%. So, we can say the value of a similar payment of TFC now and in the short run would be less in terms of purchasing power than what he received last year.

Turning to the residual 75% of Mr W's pension pot. This would've been invested according to his wishes from July 2022. This element of his pension may've fared better or worse than if the money had remained in his former pension plans. I've not yet seen evidence of the difference in performance between his two arrangements.

Based on the available evidence, I think it's more likely than not Mr W hasn't suffered financial detriment as a result of Aviva's failings.

Finally, when I'm considering a complaint like Mr W's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Aviva Life & Pensions UK Limited recorded it had given Mr W the opportunity to withdraw from the transaction in light of his falling fund value. He wasn't given that opportunity to make a fully informed decision. And so understandably he feels frustrated, upset and uncertain about what impact this has had. It's caused him to doubt the validity of the information he's been provided. And he's suffered a loss of expectation.

Aviva Life & Pensions UK Limited should therefore pay Mr W £300 for the distress and inconvenience it has caused him (this is in addition to the £100 I understand it has already paid him for the delay in the transaction).

My final decision

For the reasons I've already set out, I'm upholding Mr W's complaint and require Aviva Life & Pensions UK Limited to put matters right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 30 May 2023.

Kevin Williamson

Ombudsman