

The complaint

Mr B's complaint is about a number of problems related to Aviva Life & Pensions UK Limited's administration of his Self-Invested Personal Pension (SIPP).

What happened

I issued my provisional decision on this complaint on 5 July 2023. The background and circumstances to the complaint and the reasons why I intended to uphold it were set out in that decision. I've re-produced the relevant parts of it below, and it forms part of this final decision.

Provisional decision

One of our investigator's considered Mr B's complaint. He noted that Mr B had a number of concerns which included:

- *Concerns about the way units in his SIPP were encashed to pay charges*
- *Potential discrepancies in the value of his fund depending on whether he accessed the information via computer or phone app*
- *The timing of investment decisions and encashments by the fund managers*
- *Being sent notifications that related to other consumers*
- *Inaccurate date of birth recorded for his spouse*
- *Difficulties in establishing contact with appropriate departments within Aviva, specifically erroneous phone contact numbers and inadequate interactive voice response system*
- *The level of information made available once his investments had been made*
- *Inadequate handling of his complaints, apparent lack of ownership of the issues he'd identified and Aviva's failure to provide an adequate response to his complaint before giving referral rights to the Financial Ombudsman Service.*
- *Delays in applying his transferred-in funds to the investments he'd selected.*

The investigator said some of the issues that Mr B had complained about weren't strictly issues that he could consider, as they weren't regulated activities; for example complaint handling. The investigator explained that he could consider the impact that Aviva's administration of his pension had had on Mr B. The investigator said he thought it was clear that Mr B felt that the Aviva proposition, particularly with respect to information provision and application of platform charges, wasn't appropriate for his needs.

The investigator said Aviva's use of an interactive voice response telephone system

was part of the operation of Aviva's business and it had discretion to decide on its use. He said the "My Aviva" application was offered to consumers on an "as is" basis. The investigator said his understanding was that there were limits to the amount of personalisation that could be included and the information available was limited. The investigator explained that he couldn't tell Aviva to provide an enhanced level of service that wouldn't be available to other customers holding the same products or investments.

The investigator noted that Mr B felt the terms and conditions didn't provide sufficient detail about how the investment fund managers decided when to sell or buy assets or give sufficient information on the date assets were encashed to pay fees. The investigator said he was mindful that these issues could have been discussed with the financial adviser before Mr B elected to transfer. He noted that Mr B hadn't complained about the advice to transfer itself. The investigator said he didn't think that the terms and conditions were unfit for purpose or had been drafted in a way intended to treat Mr B unfairly or differently to any other customer.

The investigator thought Aviva had provided an adequate explanation about the date of birth issue, and that it wasn't necessary to hold the date of birth for the purposes of a form of nomination. He said that in any event, the data in question wasn't Mr B's personal data, it was his spouse's, so he couldn't award anything to Mr B in respect of any potential breach of data protection regulations.

The investigator also noted that some aspects of Mr B's complaint were still "under investigation" at the time he sent his assessment of it and that Mr B hadn't received what he would consider a satisfactory answer. The investigator said it was evident that Mr B had concerns about the robustness of the Aviva administration system, to the point where he has lost confidence in Aviva as a provider. He said having listened to the relevant telephone calls and read the evidence, he could understand why that was the case. He said it was clear that the Aviva plan and associated provision of data didn't provide sufficiently detailed information for Mr B's needs. He said as he wasn't present at the meetings between Mr B and the adviser he didn't know what might have been promised. However he thought it did seem that Mr B was expecting a level of service that at present Aviva was unable to deliver. And there was also a risk that Aviva might never be able to provide information in a format acceptable to Mr B.

The investigator said that other than the time and effort spent by Mr B in raising his complaints to Aviva, he hadn't defined any financial loss that had been caused by Aviva's accepted "disappointing" level of service. He said various Aviva staff had attempted to answer some of Mr B's questions, but their lack of consistency served only to raise more queries on Mr B's part.

The investigator thought that overall, the £250 offered by Aviva (Aviva later confirmed it was £350) was broadly in line with the amount he'd have recommended in response to the various issues that Mr B had raised. However, he thought Mr B had lost confidence in Aviva's ability to administer his pension, and it would be reasonable in the circumstances for Aviva to allow Mr B to extract himself from the contract and place his funds into an arrangement that was able to meet his need for certainty and clarity of data.

The investigator recommended that, in addition to the payment already offered by Aviva to cover trouble and upset, that Aviva should:

- agree to refund the platform fees deducted*
- offer Mr B the opportunity to transfer his funds to another SIPP provider of his choosing, without charge or penalty, within three months of the date of settlement.*

He said Aviva could retain any fund management charges already taken.

Aviva responded to say that it accepted the investigator's recommendations.

Mr B said he was willing to accept the investigator's suggested outcome subject to clarification and a satisfactory resolution to a number of issues details of which he provided.

What I've provisionally 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've come to largely the same conclusions as the investigator, and largely for the same reasons.

My role here is to assess what is fair and reasonable in all the circumstances of a case. And where a firm has done something wrong, I'm able to make awards for any financial losses that arise from a firm's failings and also for any distress and inconvenience caused. However I have no powers to fine or punish firms. The upshot is that awards aren't made purely because a firm has done something wrong; they are made relative to the impact on a customer of a firm's failing(s).

Mr B has raised a number of issues about how Aviva has administered his SIPP. In the main, and like the investigator, whilst I accept that they caused a degree of distress and inconvenience they don't appear to have resulted in any financial losses to Mr B. I say in the main, because Mr B has referred to two particular issues that appear related but that could have caused him a financial loss. It's taken some time to determine whether he actually lost out as result of those issues – and unfortunately it's still not entirely clear.

Aviva has agreed to the investigator's recommendation to re-imburse Mr B with some charges. Aviva confirmed it had calculated those charges as £2,399 from the outset of the plan to January 2023. It also agreed to allow Mr B to transfer to another arrangement within a set period without penalty. And it confirmed it is willing to pay Mr B £350 for the distress and inconvenience the matter had caused. In my view that is a fair and reasonable outcome to the majority of the administration issues that Mr B has raised given I've seen no evidence that they resulted in any financial losses to Mr B. And that, when considered in the whole, they caused a degree of distress and inconvenience to Mr B.

The two issues that appear to potentially have had a financial impact on Mr B relate to the timings of investments. My understanding is these relate to the daily cut-off times for trading, and the related delay in investing the original transfer values.

Aviva has provided evidence showing that it investigated the timing/delay in respect of one of the transfers (£569,091) and that this resulted in a loss to Mr B of £208.84. It said it credited this amount to Mr B's account on 29 November 2022. Mr B has queried the source of this information and whether this service agrees with the calculation.

We aren't able to visit firms or audit their internal systems. And I don't think where the information is derived from is material. Mr B has said "My experience to date regarding this matter is that no one in Aviva appears sufficiently interested, capable, knowledgeable, competent, or accountable to take ownership of this." Whilst I understand Mr B's suspicions, ultimately it's quite a simple exercise for Aviva to check the unit prices at the relevant dates, and I've seen no reason to doubt the veracity of the calculation and I'm satisfied its very likely to be correct.

Mr B has referred to the second transfer value and said that Aviva hasn't assessed the financial impact of delays in investing it. Mr B has said his understanding was that transactions were executed on the same day if received before 3 pm. But that there was a lead time between 30 July to 3 August 2021 between receipt internally of another transfer value and its investment.

In Mr B's e-mail to the firm dated 10 August 2021 he asked:

Why is there a lead time between 30/7 to 03/08 between receipt internally of my ex- (name of scheme) pension and purchase of DAF 4/DAF 5 units with the funds (net of the advisory fee)? There are no funds to clear.

In Mr B's recent e-mail to us dated 27 June 2023 he said that in an e-mail from Aviva to him dated 26 October 2021 it was stated that "the "pricing/cut off times" error continued until 29/09/21."

Mr B went onto say:

- Why has the above "best pricing" exercise, (applied to one of the two significant capital amounts I invested with Aviva), not been applied to the 2nd significant amount I invested with Aviva (£534,469.01) according to the transaction activity supplied by Aviva on their quarterly statement dated 30/10/21?*
- Aviva reports this 2nd significant amount as arriving on 18/09/21 and being "invested" on 19/09/21.*
- These dates fall within the window of the error reported by Aviva.*

My understanding was that the £534,469 transfer value related to the same scheme as Mr B was referring to in the 10 August e-mail - which said the transfer value was received on 30 July 2021. So it's not entirely clear to me what transfer value was received on 30 July 2021 and what transfer value was received on 18 September 2021.

In its correspondence Aviva has acknowledged that cut off trading times for two of its funds were incorrect. It said that a 'risk event' had been raised and a 'best price' exercise was being carried out on all affected orders. However I do agree with Mr B that it's not clear what 'best price' exercise has been carried out on either one or both of these other transfer values, whether a loss was identified and what, if any action was necessary and carried out. So I have addressed that in my provisional decision below.

My provisional decision

My provisional decision is that I uphold Mr B's complaint.

- Aviva has agreed to refund charges of £2,399 incurred from the outset of the plan to January 2023. I think that is fair and for an appropriate period. It's not clear to me whether Aviva has actually completed that refund yet, but if it hasn't it should arrange to do so if Mr B accepts a final decision.*
- Aviva has agreed to allow Mr B to transfer out of the plan without a charge to transfer or penalty. To clarify, that penalty free period should last for three months from the date we notify Aviva of Mr B's acceptance of a final decision. To confirm to Mr B, if he doesn't transfer out Aviva still have to comply with the other elements of this award. Aviva has also agreed to pay Mr B £350 for the distress and inconvenience caused*

by the matter. Again I think both of these are fair.

- In order to ensure the other transfer values were correctly processed, I also intend to order Aviva carry out a 'best pricing' exercise for the transfer values it received on 30 July and 18 September 2021 (assuming two transfer values were received on those dates). It should provide details of the dates and times it received the transfer values, the dates invested and at what prices. It should also provide details of any losses/gains to Mr B if the values weren't invested in line with the correct timescales (or an explanation of why a transfer value wasn't invested within those timescales if there was a reason for it). If a loss is identified it should pay such an amount into Mr B's pension plan to make up for that loss.*
- Mr B has also said that he wants an apology from Aviva. I don't think a forced apology is very meaningful. So I will leave it for Aviva to apologise to Mr B – I don't intend to order it.*

I asked Mr B and Aviva to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr B said, in summary, that the dates of the second significant transfer being received and invested were 18 August 2021 and 19 August 2021 – rather than the 18 September and 19 September dates I'd referred to in my provisional decision.

He said to list the points in the "What Happened" section as being of equal importance was to underplay the seriousness of the potential financial impact of delays in applying transferred in funds. He said all the other points listed together with incidences outside the scope of the complaint provided input to the overall lack of control and accountability displayed by Aviva over its operations.

Mr B said he hasn't asked this service or Aviva to provide an enhanced level of service that wouldn't be available to other customers holding the same products or investments. He didn't agree with the statement regarding his expectation as to a level of service that at present Aviva was unable to deliver. Or that there was a risk that Aviva would never be able to provide information in a format acceptable to him.

Mr B said he didn't understand the selection of, or the criteria used, to settle on the cut-off point of January 2023 for the refund of platform fees charged. He said there had been no step change improvement in the quality of the "service" from that date onwards. And he had in fact suffered further experiences with the Aviva "service" (outside the scope of this investigation) since that date.

Mr B said if Aviva were ordered to carry out a "best pricing" exercise to identify and correct two-year old potential errors, how could the "service" he was currently being charged for on a monthly basis be deemed to be a "fit and proper" service? He said Aviva's failure or refusal to have already carried out such a best pricing exercise, having admitted to the errors, meant that the "service" provided continued to fail any criteria set for a fair or reasonable test.

Aviva said it accepted the provisional decision. It agreed to pay compensation as set out in my provisional decision. And said a best pricing exercise had already been carried out which showed that only one transfer had been affected.

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've seen no reason to depart from the conclusions set out in my provisional decision.

As Mr B is aware, his complaint has been ongoing for some time, and I apologise for the time it's taken to reach this stage. This final decision only covers the issues that Mr B originally raised and what the investigator considered as set out above. If we were to consider other subsequent issues that Mr B has had with the service offered by Aviva since, and he continued to have problems on an ongoing basis, it would be difficult to ever get the complaint resolved. The complaint handling rules also require Aviva to be given an opportunity to consider and respond to any additional complaints made itself, and before we can become involved. So as I've said, this decision only covers the issues referred to above. On that basis I think the cut off date for the refund of fees is fair. And if Mr B has further complaints about the service provided he can raise them with Aviva in the first instance, and subsequently refer them to us if he isn't satisfied with its response.

In listing the issues that Mr B had raised I didn't wish to underplay the potential financial impact of delays in applying transferred in funds. I agree with Mr B that the delay(s) could have had a significant financial impact. So clarification of whether it did have an actual impact was clearly important. I've noted what Mr B has said about the relevant dates being 18 and 19 August 2021.

Mr B has said he hasn't asked that Aviva provide an enhanced level of service that wouldn't be available to other customers holding the same products or investments. And didn't agree with the statement regarding his expectation as to a level of service that at present Aviva was unable to deliver, or that there was a risk that Aviva would never be able to provide information in a format acceptable to him. I accept this was merely the investigator's thoughts on the matter, and clearly Mr B is in the best position to decide his own expectations and whether Aviva can provide an acceptable level of service.

My final decision

My final decision is that I uphold Mr B's complaint.

I order Aviva Life & Pensions UK Limited to:

- If it hasn't already done so, refund charges of £2,399 incurred from the outset of the plan to January 2023. I think that is fair and for an appropriate period.
- Aviva has agreed to allow Mr B to transfer out of the plan without a charge to transfer or penalty. To clarify, that penalty free period should last for three months from the date we notify Aviva of Mr B's acceptance of this final decision.
- Pay Mr B £350 for the distress and inconvenience caused by the matter.
- In order to ensure the other transfer values were correctly processed, Aviva should carry out a 'best pricing' exercise for the transfer values it received on 30 July and 18 August 2021. Aviva has said it has already carried out this exercise and it showed it didn't affect the second transfer. It should therefore provide details of the exercise to Mr B showing there was no impact.

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

David Ashley
Ombudsman