

The complaint

Mr G complains that Aviva Life & Pensions UK Limited unreasonably delayed the transfer of his personal pension to a QROPS causing him a financial loss.

What happened

Mr G lives in France and had six personal pensions held in the UK (totalling around £262,000), including one with Aviva Life & Pensions Limited ("Aviva"). In May 2020, firm "S" Mr G's French financial advisers specialising in pension advice to expatriates, recommended the policies be amalgamated and transferred to a Malta-based Qualifying Recognised Overseas Pension Scheme (QROPS) with Momentum. Once consolidated, the funds would be invested into an offshore bond held with Quilter with Tilney as discretionary fund manager. Mr G's policy with Aviva was a Group Protected Rights policy, valued at around £83,555.

S, which successfully arranged the transfer of Mr G's other plans to the same QROPS, initiated the process with Aviva in October 2020. But unfortunately the transfer of the Aviva plan took much longer than the others, delaying the investment into the bond. In June 2021 the other funds were sent to Quilter to be invested, but they were initially returned as the amount was lower than expected. But eventually in September 2021 Quilter agreed to issue the policy without the Aviva funds.

Mr G complained several times throughout the process about Aviva's poor service, as it lost documents, requested the same information more than once, failed to return calls or deliver on agreed actions. Aviva issued three final response letters, none of which upheld Mr G's concerns. In September 2021 Aviva said it was awaiting the signed transfer forms originally sent out in October 2020. In October 2021 Aviva said it was still waiting for his signed declaration, ID and questionnaire. And in April 2022 it said the transfer couldn't go ahead as it still didn't have "*all our requirements*" but without specifying what was missing. The transfer still hadn't completed when Mr G referred his complaint to this service in February 2022.

S explained Aviva had disinvested Mr G's policy in October 2021, so the funds remained in cash until 26 August 2022 when around £95,696 was finally transferred to Momentum, and invested with Tilney in October 2022, meaning Mr G lost out on a year's worth of growth and dividends. Had Mr G's policy remained invested with Aviva for longer, S thought he'd still have been worse off, as a DFM like Tilney would tend to outperform Aviva's passive investment strategy, despite the market turmoil arising from the war in Ukraine.

Provisional decision

I issued a provisional decision on this case in June 2023 in which I made the following findings (in summary):

I expected firms like Aviva to have a process to follow when arranging transfers out, particularly those with protected rights, which is likely to include some element of due diligence about the receiving scheme. Firms have regulatory fraud and scam prevention requirements which can take a while to complete. But I thought Aviva's standard process

didn't quite fit with Mr G's circumstances as a non-UK resident wishing to transfer his UK pension to a QROPS.

In its initial letter in October 2020, Aviva set out to Mr G's financial adviser its requirements (listed below) and provided a current (non-guaranteed) transfer value of just over £82,715. All of Aviva's requirements needed to be met within six months of the policyholder signing the transfer form. And Aviva said a transfer should take 15 days from the point its requirements are met.

- Overseas transfer form
- Overseas transfer questionnaire
- HMRC form APSS263 (QROPS member information)
- A copy of HMRC form APSS251 from the receiving scheme
- Original policy schedule
- Lifetime allowance detailed questionnaire
- Identification documents (listed in a guide)

I said Aviva hadn't specified any additional requirements for a transfer to a QROPS. And it didn't appear to have kept track of what it had received, which resulted in it requesting the same information more than once, even when it had previously confirmed receipt. Overall, the process took more than 18 months, which I thought seemed unreasonable, unless Mr G or his adviser caused the delays.

I set out several delays during the process:

- Aviva warned Mr G his European advisers weren't regulated by the Financial Conduct Authority (being based outside the UK), without appearing to acknowledge the relevance of Mr G himself being resident outside the UK.
- Aviva appeared to have lost the original transfer forms which Mr G's adviser sent by courier in December 2020. Although Aviva said these weren't received, I was satisfied it's more likely than not they were delivered to Aviva, as the adviser sent two sets of forms together, and Aviva subsequently located the other set, but not Mr G's.
- In February 2021 Aviva had told the adviser it would accept scanned copies of the completed forms, but then said it needed hard copies. Mr G re-sent the forms by post and email on 10 March 2021. If these were the same forms Mr G had signed in December the process needed to complete by the end of June 2021 to meet the six-month deadline.
- Aviva said it was waiting clarification around restrictions the French regulator had placed on its French business, which Mr G says weren't relevant as they only applied to new business in France, and his money was being transferred to a QROPS outside France.
- In April 2021 Aviva said it needed to check Momentum would accept funds from a non-UK resident.

Aviva's 27 April 2021 letter confirmed to Mr G it had received the following:

- Completed D1 form;
- The two completed HMRC forms (APSS251 and APSS263)
- Primary and secondary ID

But it still needed the overseas transfer form, signed by Mr G and Momentum, and the policy holder questionnaire, and I thought it also required the LTA questionnaire. Another set of documents were sent in May 2021, but the transfer forms had been signed by Momentum but not Mr G.

On 24 June 2021 Mr G emailed and posted a copy of the completed and signed pension transfer questionnaire, but in July 2021 Aviva said the forms had “timed out”.

On 3 August 2021 Aviva confirmed receipt of another set of forms signed by Mr G, and that his transfer was being treated “as a priority”. I thought this was the point Aviva’s requirements should have been met. But in September 2021 Aviva needed a new D1 form, which it had previously confirmed receipt of prior to 27 April 2021, but now couldn’t locate on its system. Aviva sent a new D1 form and questionnaire to Momentum in October 2021. On 8 November 2021 Mr G sent Aviva a completed LTA questionnaire, two forms of certified ID, a copy of the Tilney proposal and details of the Momentum scheme. I was satisfied Aviva had already received the D1 form, two HMRC forms and two forms of ID in April 2021, it received the questionnaire in June 2021, the transfer forms signed by both parties in September 2021, and in November 2021 it received the completed LTA questionnaire.

Around this time Aviva disinvested Mr G’s funds. But the transfer didn’t proceed for several more months, as Aviva wasn’t able to confirm Mr G’s identity to its satisfaction until July 2022. Mr G provided his certified ID documents to Aviva multiple times, and even offered to present himself to its London offices, if that would help. Other providers had transferred his policies to the same QROPS much more quickly, including one of a much higher value than his Aviva policy, so he couldn’t understand why this element of the process took so long.

So I looked closely at the process Aviva followed to confirm Mr G’s identity. Aviva provided Mr G’s advisers with a “*Customer Identification Guide*”, which explained the Financial Conduct Authority rules firms have to follow to comply with money laundering legislation. As Mr G’s pension wasn’t being transferred to a UK bank account from which he’d been making contributions, the guide said he’d need to provide either an original or copy of one item from list one, to confirm his identity (current passport, benefit book, driving licence, national ID card or a current tax-year HMRC coding document), and one item from list two, to confirm his address (recent council tax bill, utility bill, bank statement).

People living outside the UK or Europe would need copies of such documents to be certified by a professional person from one of the following categories:

- Lawyer/solicitor/attorney
- Regulated Accountant
- Embassy, Consulate or High Commission for the country the ID has come from (Mr G has an Irish passport so this would need to be an Irish official)
- Notary Public
- UK higher education registry staff

According to the guidance, as Mr G lived in Europe, copies were acceptable, and didn’t need to be certified

But I’d seen that Mr G’s copied ID documents had been certified by Ms H, his financial adviser. Ms H first certified Mr G’s passport (with his photograph fully visible), and a utility bill on 21 December 2020. Aviva confirmed on 27 April 2021 it had received primary and secondary ID for Mr G, which appears to have met the requirements set out in its guidance. Mr G provided further copies of his passport and a utility bill on 6 September 2021, and again with his letter of 8 November 2021.

On 17 November 2021 Aviva confirmed its requirements were met, and it was just completing its final checks. It repeated this on 6 December 2021.

Contradicting its own guidance, Aviva then said it needed to see original ID documents or certified copies because it was an overseas transfer. I said Aviva had always known Mr G was overseas himself (in Europe), and the receiving scheme was in Malta. So if they were

needed, it could have requested certified copies from the outset. In any case, Mr G's copy documents had been certified by Ms H.

Mr G provided another certified copy of his passport on 31 December 2021. But in January 2022 Aviva requested Mr G's identification documents again, and in March 2022 Aviva said it needed a better copy of Mr G's passport, as his face wasn't clearly visible. So he provided another certified copy on 31 March 2022.

Aviva then queried who had certified the documents, so Mr G's adviser confirmed to Aviva she had personally certified his identity documents on six occasions, but she'd been away at the most recent time, so Mr G had to attend his local government department in France where his documents were certified by the mayor.

The March 2022 certified copy of Mr G's passport included Ms H's name, address and phone number, signature, date and a stamp confirming the photo was Mr G's likeness. I thought it likely this information had been included each time she certified Mr G's documents. The stamp included the name of her firm (which has IFA in its title confirming her profession). But it wasn't clear if Ms H fell into one of the acceptable categories, although she may be a "regulated accountant".

I said it was reasonable for Aviva to ensure it was acting on genuine instructions, and it had a regulatory obligation to confirm Mr G's identity and address. But I thought this element of the process had taken far too long, particularly as Aviva didn't explain what was wrong with the certified ID documents Mr G had submitted and appeared to have gone beyond the requirements set out in its own guidance. Mr G was put to additional trouble and expense by having his documents copied and certified multiple times. And Aviva's notes show each time Mr G called, which he did on many occasions, he was taken through its caller verification process, so there was no doubt Mr G had requested and authorised the transfer.

As well as the delays caused by Mr G's ID, in January 2022 Aviva said it needed to know why he wanted to transfer to a QROPS (information already captured in the transfer questionnaire). I thought this was probably a standard fraud prevention question, whereby a transfer to a QROPS can raise a red flag, but Aviva had failed to recognise the relevance of Mr G's status as a non-UK resident for whom a QROPS is an appropriate pension vehicle. Aviva then said it was completing its due diligence, after which the transfer would take ten days to process. But in February 2022 Aviva decided it needed to speak to Mr G about the transfer. But he was unwilling to divulge personal data in a call from an unidentified number he couldn't be sure was genuine. Mr G's identity was confirmed to Aviva's satisfaction on 5 July 2022, and the transfer finally completed in August 2022, with no clear explanation for why it had taken so long.

So I upheld the complaint and set out what Aviva should do to put things right. The amount eventually transferred (£95,696), was around £12,000 higher than the original October 2020 valuation. But as Mr G's policy had been disinvested and remained in cash since October/November 2021, he'd potentially missed out on around ten months of investment growth and dividends. I said I wasn't holding Aviva responsible for the delay in investing the proceeds of Mr G's other five policies with Quilter/Tilney. As although the original intention had been to amalgamate all six policies, it transpired it was possible to issue the policy in September 2021 and then add the Aviva funds later, enabling Mr G to mitigate his loss. I said the redress should put Mr G in as close a position as possible, as if the funds had been disinvested in August 2021, transferred to Tilney/Quilter in September 2021, and invested in line with his other funds. I said the compensation should be paid into Mr G's pension plan, but if that wasn't possible it should be paid to him in cash, with a notional adjustment for tax.

I also said Aviva should pay Mr G £650 for the trouble and upset its delays had caused.

Responses to the provisional decision

Both parties responded.

Aviva disagreed with the provisional decision and maintained the correct transfer date had been used.

It said the transfer couldn't proceed until the correct ID documents were received, and at each stage Mr G's identification was reviewed at a more senior level as it fell outside their procedures for acceptable ID. It pointed out that when further ID was requested the same documents were re-sent.

In response to why Mr G's policy had been disinvested in November 2021 if its requirements hadn't been met, Aviva replied that it appeared from a processing point of view that all requirements were received, so stage one of processing the payment commenced. But when the transaction was checked by a senior representative they said that not all requirements had been received, so they asked for further documents/ID.

Mr G's adviser responded and made the following points (in summary):

- She had completed a large number of pension transfers over the years including Aviva, and this is the worst service she'd experienced in her whole career.
- The transfer questionnaire is never supplied with the transfer documents but produced by Aviva once it received the transfer pack from the receiving scheme (Momentum in this case).
- The questionnaire is sent direct to the client and includes duplicate questions as the transfer pack, in order to ensure the client understands the implications and isn't being scammed. Mr G completed this questionnaire and provided it to Aviva three times.
- Aviva confirmed to Momentum several times that all its requirements were met, and the transfer would proceed in 5-7 days, on each occasion this was a lie.
- Mr G's funds were impacted by market turmoil from the war in Ukraine, his funds were disinvested but not transferred for a whole year which is unacceptable.
- A pension transfer is a long, complex process and requires advice, suitability report, illustrations etc. But the clock started when the forms were signed and sent to Aviva, which was in December 2020.
- The same certified ID was accepted by Mr G's five other pension companies without an issue.
- Aviva's requirements were met in November 2021, which is still a long time after the process started.
- But the funds didn't arrive for nearly a further year, during which time Momentum had to carry out additional work it hadn't needed to do for any of the other transfers.
- If an adviser treated Mr G the same way as Aviva, they would lose their job and rightly so.
- Mr G is a French not UK resident so is subject to French not UK tax, the rate for which is 30%. There is no entitlement to tax-free cash in France, so the notional adjustment should reflect this.

Mr G himself also responded, and made the following points (in summary):

- He wanted to emphasise that his funds were disinvested during 2021 but not paid to Momentum until August 2022.

- He didn't understand why the funds were disinvested in November 2021, or how his policy was valued when it was transferred.
- So he wanted to ensure the loss calculation would reflect the difference between the disinvestment value, and when the funds were transferred.
- He had asked Aviva for statements to show the performance of his policy since October 2020, but these have not been provided.
- Aviva's claim that his identity documents caused the delay is disingenuous, and Aviva benefitted financially from delaying the transfer.
- One of Aviva's employees had admitted the passport photograph was legible but had been rendered illegible by its own scanning process.
- Aviva should be able to detail a "chain of custody" about what was received and when.
- He is a French resident not a French citizen
- If the compensation is paid to him in cash rather than into his pension plan, it should be treated as a drawdown and still enable him to take tax-free cash.
- It's unfair a notional adjustment will be made for tax and then he'll actually pay French tax on the amount received (with credit for UK tax paid) so he's being penalised for Aviva's failures.
- He has not received any apology from Aviva or the policy valuations he requested.
- The other pension monies should be included in the loss calculations, as they weren't invested while waiting for the Aviva funds.
- He suspects Aviva may have misfiled the original documents, as he had two firms of advisers one in Spain and "S" in France.
- He doesn't accept this is the only transfer to a QROPS ever dealt with by Aviva.
- The eighteen-month timescale is completely unreasonable, he was told several times everything was in order, and even Aviva's own staff couldn't explain why it was taking so long.
- Aviva could have contacted him to resolve issues as it had his UK and French mobile numbers and email address.
- It's too generous to attribute Aviva's failings to confusion and lack of clear procedures following the UK's departure from the EU. They are a large company with significant resources (both financial and legal) and should have been able to determine what the Brexit impact was prior to the UK's departure.
- The whole process has been excruciatingly painful.

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.

So I'm now in a position to issue the final decision.

I'm aware how stressful the situation was for Mr G, particularly during the time when his policy had been disinvested but not transferred. His funds were "in limbo, at risk of losing investment growth during a period of market volatility. And he couldn't proceed with the full investment in the bond including the Aviva monies, as planned.

Aviva has provided very limited information or explanation about why the transfer took so long. There were certainly some issues with the efficiency of its administration, with forms going missing, and information requested which had previously been received. Aviva's unfamiliarity with a transfer to a QROPS and the additional complications arising from Brexit shouldn't have had such an impact on Mr G. I think someone in Aviva with the relevant knowledge and experience should have taken ownership, kept him updated and explained the reason for the delays, and what still needed to happen. The communication with Mr G

and his adviser was poor, misleading and wasn't proactive, meaning they were both put to additional trouble repeatedly chasing Aviva. And Aviva didn't treat Mr G fairly when it told him or his adviser more than once that its requirements were met, and the transfer was progressing when it wasn't. I don't find Aviva deliberately lied or delayed the transfer to benefit financially. But I think having disinvested Mr G's policy, when it decided to delay the transfer further Aviva should have given him the option to reinvest them until such time it could go ahead. It wasn't reasonable for a major element of his retirement provision to be out of the market for so long without his agreement.

It seems the substantive delay between disinvestment and transfer was caused by Aviva's process for verifying Mr G's identity to its satisfaction. There's no dispute that Aviva needed to confirm Mr G's identity and ensure it was acting on legitimate instructions, to comply with regulatory and fraud prevention requirements. But it's not clear why Aviva went further than its own guidance, which said it would accept original or copy documents, but only someone living outside the UK or Europe would need copies to be certified. As Mr G was resident in Europe he should've been able to submit copies of his documents without needing them to be certified. And in any case, all the copies of documents Mr G submitted had been certified by his financial adviser Ms H. In response to the provisional decision, Aviva said Mr G's ID didn't meet its requirements without saying why not. So as far as I can tell this was due to uncertainty over whether they had been certified by one of the acceptable categories of person. I say this as Aviva accepted the documents certified by Mr G's local mayor but not by his financial adviser.

I think if Aviva wasn't sure who had certified Mr G's ID or wouldn't accept documents certified by Ms H it should have queried this straight away. It wasn't helpful to simply say the ID documents didn't meet its criteria without explaining why, when clearly Mr G had submitted his genuine passport, and there was no real doubt he'd authorised the transfer. Aviva said the photo wasn't legible, so it needed a clearer copy, but I don't think that was necessary, as the certification process confirms the original has been seen and is a true likeness to Mr G. I think if Aviva had explained its requirement at the outset, any delay would've been avoided, as Mr G would have got his ID documents certified by the mayor and not wasted time and effort submitting multiple copies of his ID documents certified by Ms H.

So for this reason, I still think but for its poor administration and service, Aviva's requirements could have been met in full much earlier. So it would have been in a position to disinvest Mr G's funds in August 2021 and transfer them to Quilter/Tilney shortly after that minimising the time he remained uninvested.

So I uphold this complaint and require Aviva to put things right as set out below.

Putting things right

My aim here is to put Mr G as close as possible to the position he'd have been in if his policy had been disinvested in August 2021 and the proceeds transferred to Quilter/Tilney in September 2021 to enable it to be invested in line with his other funds.

- Aviva should first clarify the date Mr G's policy was disinvested (it has variously been mentioned as happening during October or November 2021) and confirm the actual disinvestment value (Value A). It should then calculate what the value of Mr G's policy would have been had it been disinvested on 3 August 2021 (Value B). If value B is higher than value A then value B should be used in the loss calculation. If value A, the actual disinvestment figure is higher, then that figure should be used in the loss calculation.

- And then Aviva should liaise with Mr G's new provider to carry out a loss calculation based on value A (or B) being transferred to Momentum in September 2021 and then invested with Tilney in November 2021.
- To do this Aviva should obtain a current valuation of Mr G's QROPS and compare it with the notional value if value A (or B) had been added to it and invested in November 2021.
- If the *notional value* is lower than the *actual value* then no compensation is payable. But if the notional value is higher than the actual value then there is a loss and compensation is payable.
- If there is a loss Aviva should pay into Mr G's QROPS to increase its value by the amount of compensation plus any interest. The amount paid should allow for charges and any available tax relief. Compensation should not be paid into the plan if it would conflict with any existing protection or allowance.
- If Aviva isn't able to pay the compensation into Mr G's pension, it should pay the sum to him in cash. But as the purpose of a pension is to provide an income in retirement which would be taxable, the compensation paid in cash should be reduced to *notionally* allow for the income tax which would otherwise have been paid. This is a notional deduction, no actual tax is paid to the authorities.
- For a UK taxpayer, typically 25% of pension income can be taken tax-free with the remainder taxed at their likely tax rate in retirement. But Mr G is a French not UK resident and subject to French rather than UK tax rules. As there is no such tax-free entitlement under French law, the notional tax deduction must be applied to the full amount of compensation.
- Mr G has confirmed his likely tax rate at retirement in France will be 30%. So for the purpose of this decision, if the compensation has to be paid to Mr G in cash rather than into his pension, Aviva should reduce it by 30% to notionally reflect the tax he'd otherwise have paid.
- To avoid further unreasonable delays, the compensation should be paid within 28 days of Aviva being notified of Mr G's acceptance of my final decision. Interest should be added at a rate of 8% simple per year for any period over 28 days to the date of settlement, unless the reason for the delay is outside of Aviva's control.
- The calculations of the compensation should be provided to Mr G in a clear and easy to understand format.
- Aviva should also provide Mr G with the copy statements he has requested, so he can see the value of his policy from 2020 to the point it was disinvested.
- Aviva should pay Mr G £650 for the trouble and upset the delay caused him.

My final decision

I uphold this complaint. Aviva Life & Pensions UK Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 August 2023.

Sarah Milne
Ombudsman