

The complaint

Mrs W is unhappy with how Aviva Life & Pensions UK Limited processed the transfer of her pension to another pension provider. The transfer value paid wasn't based on its value at the date of transfer, it was based on an earlier date when its value was lower. Mrs W doesn't think this was appropriate and considers it has resulted in her suffering a financial loss.

What happened

I issued my provisional decision on this complaint on 21 July 2023. The background and circumstances to the complaint and the reasons why I was provisionally minded to uphold it were set out in that decision. But to recap, Mrs W intended to transfer, along with some other members of a Group Personal Pension (GPP), the benefits she had built up in her GPP to another pension provider. The transfer was intended to be arranged as part of a 'buddy' or 'block' transfer. By transferring as part of a block transfer, the members wouldn't lose their entitlement to a protected tax-free cash benefit.

Mrs W said that all of the members' transfer instructions were sent at the beginning of February 2021. My understanding was that this was to the receiving scheme provider. Aviva received an instruction to transfer from the receiving scheme by letter dated 24 March 2021. This 24 March 2021 letter referred to other members, including a member whose transfer instruction Aviva had received in February 2021. It had already processed that transfer as an individual transfer (i.e. not on a 'block transfer' basis) using an effective date of 17 February 2021.

Aviva had said that on receipt of the 24 March 2021 letter and recognising that another member had already transferred who was supposed to have been included as part of a block transfer, it attempted to contact the receiving scheme to agree how to proceed. It said it initially didn't receive a response and so chased the matter on a number of occasions. And that eventually it discussed the matter with the receiving scheme in a telephone conversation on 28 May 2021. It said the receiving scheme confirmed to use the 17 February 2021 date as the effective date for all the policies.

Mrs W received confirmation that her pension benefits had been transferred on 7 June 2021. The amount transferred was £310,534, including £1,022 interest to account for late payment. The transfer amount was calculated using the value as at 17 February 2021. The transfer value on 7 June 2021 was £316,414.

In setting out my provisional findings, I said that in deciding what was fair and reasonable I thought the starting point should be to consider the parties' obligations as set out in The Group Personal Pension Plan Booklet. This set out the general terms and conditions applying to the plan. And Section 3.1, Transfer payments provided:

3.10 Transfer payments

If You want to, the value of all or part of the plan can be transferred to another Scheme or plan which is a Registered Pension Scheme or a qualifying recognised overseas pension scheme. You can find full details on this in the Scheme rules. The transfer must be made

before retirement benefits are taken. The transfer date will be either:

- *the date that We receive all of the information required to enable Us to complete Your transfer request; or*
- *any other date allowed and that We agree with You.*

You should ask Us for a transfer payment in writing (or by any other means that We may agree to). The amount of the transfer payment will be worked out in line with section 4.7.

Section 4.7 provided:

If the value of the Total Member's Fund is transferred to another scheme or plan the value of the Total member's Fund will be equal to:

- *the number of Units in each Investment Fund attaching to the plan at the transfer date (in line with section 3.10), including those purchased by any contributions due up to and including the transfer date; multiplied by*
- *their Unit Price at the next valuation of Units after the transfer date.*

The terms You and Your were defined.

You/Your normally means the member specified in the schedule.

However, it can mean the spouse, Civil partner or dependants of the member if they are receiving an annuity payable after the death of the member.

I said I thought the transfer date would be either the date that Aviva received all the information it needed to complete the transfer request, or a date agreed with Mrs W. I said in my experience this was a normal type of clause given that there was usually a period of time between when a transfer request was made and when the transfer was actually completed.

Aviva had received Mrs W's transfer request on 24 March 2021. The terms referred to:

the date that We receive all of the information required to enable Us to complete Your transfer request;

So I said "Your" was Mrs W's request. I said on the one hand, on the basis of my understanding that it had all the information it required on 24 March 2021, it could be argued that Aviva was in a position to 'complete' Mrs W's transfer request. In theory it could have transferred those requests it received on 24 March 2021 as a block transfer – it only required two requests.

However on the other, Aviva had recognised on receipt of the 24 March 2021 letter that it had already received the transfer request from another member (at least one) which had already been transferred. So Aviva was in a difficult position. And through no fault of its own.

I said it was also worth noting that the receiving scheme had said although the date of the transfer form Mrs W signed showed 11 February 2021, its records indicated that it didn't receive the application until 23 March 2021.

I said on receipt of that 24 March 2021 request, I thought Aviva had acted reasonably in deciding that it should do something rather than merely process the other requests to transfer as a block transfer. I accepted this would have worked for the part of the group that

hadn't already transferred - but not the first member who had requested earlier and transferred. And I thought if it was addressing that issue (or any other earlier transfers) I didn't think it was unreasonable to treat them all as one block transfer.

So I said I thought it was also arguable – if Aviva was taking this other member's situation into account - that it didn't have sufficient information to 'complete' Mrs W's transfer on 24 March 2021 given it needed to check how to proceed. But then I thought it followed that it appeared to have had all the information it required on 28 May 2021; the date Aviva said the receiving scheme advised it to use the same effective date of 17 February 2021 for all the transfers. However Aviva hadn't used the 28 May 2021 date as the effective date either – it said it had used the 17 February 2021 date to ensure all the transfers were treated as a block transfer. However this 17 February 2021 date wasn't in line with its own terms - it hadn't got all the information to complete Mrs W's transfer at that date - it hadn't even received her request at that point - and it also hadn't agreed that date with Mrs W.

Mrs W had said that Aviva didn't need to use the same effective date for all the transfers as HMRC rules didn't require it. However I said pension providers were required to interpret the relevant legislation and HMRC rules and guidance for themselves in order to ensure they complied with the requirements. I referred to the relevant guidance which said that to be a single transaction it wasn't necessary for the sums/assets to be 'physically' passed on the same day. And it also referred to a 'reasonable' timescale. I said I didn't think Aviva deciding block transfers (as in at least two of the transfers for them to be 'block') needed to use the same effective date was an unreasonable interpretation.

Neither Aviva nor the receiving scheme had a recording of the 28 May 2021 telephone conversation call itself. Aviva had said the receiving scheme told it to use 17 February 2021 as the effective date. The receiving scheme had said it was Aviva who said it needed to use the 17 February 2021 date. I said that I didn't think the original record of the telephone conversation or subsequent e-mails were conclusive and clearly showed that it was the receiving scheme that advised Aviva to use the 17 February 2021 effective date. However I thought Aviva's records did show that it tried to contact the receiving scheme on 6 April, 19 April, and 10 May, before eventually speaking on 28 May 2021. So I didn't think it was reasonable to say that Aviva had caused the wider delay in the transfer not being processed in a timely manner.

I said I didn't know if the first transfer request (or other earlier requests) had come directly to Aviva from the member(s) or from the receiving scheme. However I said I didn't think it would have been right for Aviva to merely the process the other members' requests given it was aware this would have implications for the first member. I think it was right to do something.

I explained I was bound by the Dispute Resolution rules (DISP Rules) that are set out in the Financial Conduct Authority's Handbook. DISP 3.6.1 provides:

The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.

I said I recognised that Aviva was in a difficult position on receiving the 24 March 2021 letter. But I thought Aviva should have been mindful of its own terms and conditions and its contractual obligations to Mrs W in dealing with the matter.

I said it seemed to me that the two obvious transfer dates would have been 24 March or 28 May 2021. I said it was arguable that Aviva had all the information it required to complete Mrs W's transfer on 24 March 2021. However I didn't think Aviva was responsible for the delay from 24 March to 28 May 2021. The alternative as provided for in the terms was

another date allowed and that Aviva agreed with Mrs W. But it seemed to me that Aviva agreed an alternative date with the receiving scheme.

Taking all the above into account, I said I thought the fairest date to use as the transfer date was 24 March 2021. I recognised arguments could be made for different dates. And whilst I understood why Aviva had used 17 February 2021, I didn't think that was appropriate given it wasn't actually in accordance with its own terms. I didn't think 28 May 2021 was fair given I didn't think Aviva was responsible for the delays in agreeing how to proceed with the receiving provider. And 24 March 2021 was the date Aviva had all the information it required to process Mrs W's transfer itself – albeit again, I recognised that was arguable in the particular circumstances. However I also thought if Aviva had contacted Mrs W and the other members including those who had already transferred on receipt of the 24 March letter, there was no reason to suggest they wouldn't have agreed using that date as the transfer date.

I said I recognised there was then the issue of Mrs W not being invested from 24 March 2021 until 17 June 2021. However I explained what I was considering here was whether Aviva had done something wrong. And if so what losses naturally flowed from Aviva's errors. I said for the reasons I'd outlined I thought Aviva should have agreed and used a transfer date of 24 March 2021 (and reworked the other member(s) pension(s) who had already transferred to that date, if it considered it was necessary). So I thought fair compensation should be calculated from that starting position.

My provisional decision therefore was to uphold Mrs W's complaint in part. I went on to set out how I thought Aviva should calculate and pay fair compensation to Mrs W.

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

Aviva provided a copy of an e-mail that it had received from the receiving scheme on 26 March 2021. It said this showed the receiving scheme had received transfer requests from all the members in February 2021 (and not 23 March 2021 as the receiving scheme had claimed). It said the receiving scheme had acknowledged that it had erred in not adding all the policyholders to the original request sent in February 2021 through the Origo transfer system.

It said the provisional decision appeared to be basing the use of 24 March 2021 on the fact that the receiving scheme hadn't received instructions by then. However this wasn't correct. It said but for the receiving scheme's error Aviva would have received all the transfer requests at the same time in February. It said the decision was in effect penalising Aviva for the receiving scheme's error. And it wanted to know what amount the receiving scheme would be required to pay towards the costs of the compensation. It said if it was still considered that 24 March 2021 should be used then it asked if it should provide that figure to the receiving scheme for it to pay as it was responsible for the original error.

Mrs W didn't provide any further evidence or arguments to consider.

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 my provisional decision to uphold the complaint in part as set out above.

As I said in that decision, I do recognise that Aviva was put in a difficult position through no fault of its own. It had received and processed the February transfer request and then subsequently received the other requests on 24 March 2021. As I said, it identified there was a problem and I think it acted appropriately in deciding that it should do something rather than merely process the other requests to transfer as a block transfer.

However once it was in that position and in deciding what to do, I think it was bound to be mindful of its own terms and conditions and its contractual obligations to Mrs W. That formed the basis of the relationship between itself and Mrs W, and the terms set out how a transfer would be calculated and paid.

As I explained in my provisional decision, there were good reasons to set out the basis on which transfer values would be paid given the potential for disputes where there was a period of time between receipt of a transfer request and payment. I can see no basis to use 17 February 2021 for Mrs W's transfer. Aviva hadn't even received Mrs W's request to transfer at that point. It's not material whether that was a result of an error by the receiving scheme or whether the receiving scheme had received the transfer requests in February (rather than 23 March as it had claimed); the decision doesn't turn on that issue. Mrs W's complaint is against Aviva, and I've considered Aviva's obligations in this decision.

If Aviva considers that the receiving scheme is at fault either fully or in part it can pursue that scheme to try and recover its costs. That is a matter for Aviva to decide. However as I explained in my provisional decision, the compensation only provides for the losses that I consider flow from Aviva's errors, and fair compensation should be calculated as at 24 March 2021 (not the later date claimed by Mrs W).

Putting things right

I order that Aviva Life & Pensions UK Limited calculate what Mrs W's transfer value would have been on 24 March 2021. If that value is higher than the value actually transferred (which I understand was £310,534.54 – and included payment for late interest which it should include in the comparison), then it should pay such amount into Mrs W's current pension to increase its value by that difference. The payment should allow for the effect of charges and any available tax relief. Aviva Life & Pensions UK Limited shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Aviva Life & Pensions UK Limited is unable to pay the compensation into Mrs W's pension plan it should pay that amount direct to her. 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 Mrs W won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mrs W's actual or expected marginal rate of tax at her selected retirement age. It's reasonable to assume that Mrs W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs W 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%.

Aviva Life & Pensions UK Limited should also pay Mrs W £200 for the distress and inconvenience I'm satisfied the matter has caused to her.

Interest at the rate of 8% simple per annum should be added to any compensation due from the date of this decision to the date of settlement if settlement isn't arranged within 28 days of this service notifying Aviva Life & Pensions UK Limited that Mrs W has accepted this decision.

My final decision

My final decision is that I uphold Mrs W's complaint in part.

I order Aviva Life & Pensions UK Limited to calculate and pay compensation to Mrs W as set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 8 September 2023.

David Ashley
Ombudsman