

## The complaint

Mr B, Mr V and Ms C as trustees of the J V Discretionary Will Trust, represented by Mr B are complaining that Aviva Life and Pensions UK Limited wouldn't provide them with information about the value of an investment bond.

## What happened

In early 2022, the trust held two investment bonds – one with Aviva, and one with a third party. The trustees decided to assign the bonds to two of the beneficiaries. They completed a Deed of Assignment in May 2022 and Aviva confirmed the assignment of their bond at the beginning of June.

At the end of July, Mr B asked Aviva for the valuation of the bond on the date of assignment saying it was needed for inheritance tax purposes. He asked again in August but had no response. Mr B wrote to Aviva again in October and this time it replied, telling Mr B he didn't have the authority to receive the information he'd asked for – and saying it had provided the information to the policy holder to pass on at their discretion.

Mr B complained about this to Aviva. It apologised to Mr B that it had taken them so long to reply. But it didn't uphold his complaint, reiterating that he didn't have the authority to receive the information.

It said the two letters from Mr B sent July and August 2022, were on Mr B's IFA headed note paper. It said he did not make any reference to being an ex-trustee or the reason the valuation was requested. It said its staff followed its procedures and did not provide information to what it saw was an unregulated IFA requesting it. It said once Mr B explained why he wanted the valuation, it sent the information to the new trustees, as Mr B was no longer authorised to receive it. It added that Mr B would have known who the new trustees were, and it has asked why Mr B didn't contact them. It said it has done nothing wrong and was following its security and safeguarding procedures to protect its clients' accounts.

I issued a provisional decision on this complaint on 10 October 2023. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

"I am currently upholding the trustees' complaint. I will explain why:

- Mr B in his capacity as trustee, arranged for Aviva to have a deed of assignment, so that an investment bond could be assigned. Mr B did this on 18 May 2022. Aviva wrote to Mr B on 1<sup>st</sup> June 2022 to confirm the bond had been fully assigned to the beneficiaries.
- Mr B sent letters in July, August and then October 2022, asking for a valuation of the bond that had been assigned on 18 May 2022. He needed a valuation for that date, for inheritance tax purposes. This is so as a trustee, he could file a tax return.
- Aviva did not respond to his requests in July and August 2022. It said, from its

records it could see that staff thought Mr B was an unregulated IFA and wasn't entitled to this information. It said Mr B did not explain what he wanted the information for and why he had asked for it. It said when Mr B requested the information again in October 2022, he had explained why he needed the information, so as part of its procedures it sent the valuation to the new policyholders.

- I can see Mr B as a trustee, was a customer of Aviva's on 18 May 2022. This was the day he arranged for the investment bond to be assigned. Mr B's request for information: a valuation of a bond, was on a date when Mr B was a customer of Aviva.
- Mr B has explained to our service that he needed a valuation of the bond, so that he could, on behalf of the trust, complete a tax return. So, I can see that Mr B was requesting information from when he was a customer of Aviva and I think had good reason to ask for it.
- Aviva said that it was right to not provide the information to Mr B when he requested it and that its staff followed the right procedures. It said his details had been removed from its system and that its staff would have seen that he was an IFA and not an ex-trustee of the investment bond in question. But I don't think it was unreasonable for Mr B to ask for a valuation of a bond on a date where he was the trustee of that investment and a customer of Aviva. And as I have already concluded he had a clear need for that information.
- Aviva removed Mr B's details from its system and so it was then unaware of his role as trustee. Ultimately, this is something that Aviva is responsible for doing, and I think, on balance, caused its staff to not understand under what capacity Mr B was asking the information for. I think this is a failing on Aviva's behalf and not something Mr B would have been aware of when he made contact to obtain the valuation.
- Aviva has suggested Mr B could have done several things himself such as contact the new policyholders or make a more detailed request when he contact it. But I am looking at whether Aviva acted fairly when it received Mr B's requests for a valuation. Looking at things overall, I don't think it did. So, I am currently minded to uphold the trustees' complaint. Aviva needs to put things right."

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision.

Aviva responded on 10 October 2023. It made the following points:

- Mr B never stated who he was, in what capacity he was requesting the information or for what reason. As far as Aviva were concerned, he was making an unsolicited request for information.
- Mr B was informed who Aviva had sent the information to, the new trustees and policy holders. Aviva has asked our service what reasons Mr B gave for not asking them for this information.
- Mr B could have obtained the information from the new policy holders in October 2022 and avoided any fees being charged.

- When Mr B obtained the information from the third party for the return, was this in October or after December and as such should the third party not be liable for the entire amount of interest.

Mr B, on behalf of the trustees, responded on 11 October 2023 and made some additional points. He said:

- He never acted in a capacity as an IFA for the policy. He said his role was and always had been that of trustee.

There was an IFA firm in place however Aviva were informed in writing by the trustees that it had resigned and that there would be no new IFA. Mr B also provided two letters that confirmed what he had said in this regard: one from him and a response by Aviva.

### **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.

I have read the latest submissions from Aviva and Mr B carefully.

Aviva has stated again that although it agrees with most of my findings, the important issue here is that Mr B didn't say who he was or in what capacity he was requesting the information. I have again looked at this and acknowledge what Aviva are saying.

Mr B has provided more information regarding this and attached two letters with his response to my provisional decision. The first is dated 14/04/2021 from the trustees to Aviva. The trustees within the letter notified Aviva that the IFA has removed themselves from its position within the trust, and that Aviva should communicate with them directly. They then give Mr B's name and his address as the point of contact.

The second letter provided by Mr B is from Aviva dated 22 April 2021, thanking him for the request to remove the financial adviser. It confirms the adviser has been removed from the plan. Aviva also said within the records that the plan records had been amended to show there was no adviser applicable.

I think, after reading these two letters and reviewing the documentation provided by both parties overall again, that Aviva should have understood under what capacity Mr B was writing to them in. Mr B had not acted in any capacity as an IFA for the trust and had only been a trustee. What's more, Aviva had only recently amended its records to show Mr B as trustee and point of contact for the trust. So, I think it should have been apparent to Aviva that Mr B was previously a trustee for the bond and was trustee on the date that he was asking for the valuation. I don't think it was reasonable for Aviva to consider Mr B's request as an unsolicited request for information, considering he was a trustee and point of contact for them, up until recently.

Moving on, Aviva also asked why Mr B did not go and obtain the information from the new trustees, after it told him it had sent the information on to them. I asked Mr B this question.

Mr B said that Aviva said in its letter 18/10/2022 that it had sent the information to the policyholder. Mr B checked with his other trustee Mr V and established that the information was not sent to him. He said the information requested was about a valuation at the time he and Mr V were trustees. He couldn't see why Aviva would send the information to the new trustees as it wasn't relevant to them. I find Mr B's reasons as to why he didn't contact the new trustees, persuasive. However, based on what I have already found, I don't think

any of this makes a difference as to the outcome of this complaint. This is because I have concluded Aviva should have provided the information to Mr B when he requested it.

As I said in my provisional decision, I am looking at whether Aviva has acted fairly here or not. When I consider what I have just concluded and my findings within the provisional decision, I don't think it has. I think it ought to have been aware of who Mr B was when he contacted it, asking for a valuation.

I do think Aviva should have provided the trustees with the valuation when it was asked to do so. So, I uphold the trustee's complaint and Aviva need to now put things right.

### **Putting things right**

Mr B has said that the trustees were unable to file their tax return on time due to not being able to obtain a valuation from Aviva. When I consider what I have concluded above, I am satisfied, but for Aviva's failing in this complaint, the trustees would have filed their tax return in time.

Mr B has provided evidence of a letter from HMRC in May 2023 showing that the trust has been fined for not filing its return in time. It also shows on this correspondence the amount of interest HMRC have added for the return being late. I have looked into this and can see that the trustees have accrued a fine of £100 and interest added from December 2022 to May 2023 of £143.43.

The investigator explained that the trustees had made another complaint about a third party and that it was jointly liable for the delay. The third party has accepted that it will pay half of the penalty and interest accrued. Aviva has asked in its recent submission about when the third party provided information to Mr B. I have concluded that Aviva is responsible for not providing information to the trustees, and but for this failing, they would have submitted their tax return on time. So, because of this I think Aviva are jointly liable for the delay with the third party who have already accepted this.

I agree that Aviva should pay for half of this amount for the reasons I have already mentioned in my findings.

To put things right Aviva, need to:

- Pay Mr B, Mr V and Ms C as trustees of the JV Discretionary Will Trust half the fine they had to pay to HMRC along with half the interest that they have accrued. This would total £121.71. In addition, Aviva should pay 8% simple per year to this value from the date the trustees paid the charge up to the date of settlement.
- Pay Mr B, Mr V and Ms C as trustees of the JV Discretionary Will Trust a £150 payment for distress and inconvenience. Aviva did not reply to Mr B in his capacity as trustee when he wrote to it on two occasions and then did not resolve his complaint over several months, causing what would be an amount of stress for the trustees.

### **My final decision**

My final decision is that I uphold Mr B, Mr V and Ms C as trustees of the JV Discretionary Will Trust's complaint about Aviva Life and Pensions UK Limited and it now needs to put things right as I have described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B, Mr V and Ms

C as trustees of the J V Discretionary Will Trust to accept or reject my decision before 27 November 2023.

Mark Richardson  
**Ombudsman**