

The complaint

Ms W complains that Aviva Life & Pensions UK Limited caused a delay when she switched her pension to them. She went on to explain that the delays resulted in her suffering investment losses.

Ms W would now like Aviva to recompense her for those losses covering the time that she spent out of the market.

What happened

Note – Ms W has raised a dual complaint about the actions of both AJ Bell (who she switched her pension from) and Aviva (who she moved her pension to) relating to the time taken to switch her pension. However, this outcome will only focus on the actions on Aviva because the AJ Bell element of the case has been dealt with under separate cover.

In October 2022, Ms W decided to move her pension from AJ Bell to Aviva. The switch was undertaken using the Origo system and the monies were initially sent in two separate payments: c£265,000 was sent on 26 October 2022, and c£54,000 was sent on 27 October 2022.

Aviva contacted AJ Bell on a number of occasions between 1 and 8 November 2022, asking them to update Origo with the information that they needed to facilitate the switch. As Aviva weren't in receipt of the information that they needed to process the switch, they returned the first tranche of monies to AJ Bell on 9 November 2022. Aviva explained that this was because, under the regulator's client money, or CASS rules, they weren't able to hold onto funds for more than 10 days without being able to apportion them to the consumer.

On 10 November 2022, Aviva contacted AJ Bell and asked them to update the lifetime allowance (LTA) position on Origo because, they said, if the LTA status wasn't clarified, the second tranche of monies would need to be returned that day. AJ Bell responded to Aviva, clarifying the LTA position of the plan later that same morning (10 November 2022). However, despite the confirmation, Aviva returned the second tranche of funds to AJ Bell.

Shortly afterwards, Ms W decided to formally complain to Aviva. In summary, she said that she was unhappy with the length of time taken to process the switch and was concerned that she'd lost around £10,000 in growth potential because of the time taken to move her monies to them.

After reviewing Ms W's complaint, Aviva concluded they were satisfied they'd done nothing wrong. They also said, in summary, that having reviewed their own actions, they'd chased AJ Bell on multiple occasions, but they couldn't be held accountable for any errors that had arisen as a result of an incomplete Origo transfer request.

Ms W was unhappy with Aviva's response, so she referred her complaint to this service. In summary, she said that she was concerned that Aviva hadn't acted promptly enough in dealing with the switch request.

The complaint was then considered by one of our Investigators. He concluded that AJ Bell and Aviva were both responsible in part for the delays that Ms W had encountered whilst switching her pension. However, he felt that Aviva should only be held accountable for some (but not all) of the delays relating to the loss of investment growth linked to the second tranche of funds that were sent.

Aviva, however, disagreed with our Investigator's findings. In summary, they said they had acted promptly and reasonably. They went on to say that they couldn't have held onto Ms W's monies any longer than they did because of the regulator's client money rules.

Our Investigator was not persuaded to change his view as he didn't believe Aviva had presented any new arguments that he'd not already considered or responded to. Unhappy with that outcome, Aviva then asked the Investigator to pass the case to an Ombudsman for a 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.

I have summarised this complaint in less detail than Ms W has done, and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here, which is whether Aviva were responsible for the investment losses that Ms W suffered as a consequence of the delays in processing her switch request.

My role is to consider the evidence presented by Ms W and Aviva in order to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice. Where there's conflicting information about what happened and gaps in what we know, my role is to weigh up the evidence we do have, but it is for me to decide, based on the available information that I've been given, what's more likely than not to have happened. And, having done so, I'm upholding Ms W's complaint and it's largely for the same reasons as our Investigator - I'll explain why below.

Ms W's AJ Bell pension contained funds totalling around £319,615.92. The majority of those monies were already in drawdown (£303,315.50), but £16,300.42 of her pot was uncrystallised.

AJ Bell initially sent the switch monies to Aviva in two tranches, the first for £264,997.58, was sent on 26 October 2022, and the second tranche of £54,618.34 was sent on 27 October 2022. The two payments totalled the full value of her fund, £319,615.92. However, Aviva needed to know out of the funds that they'd received from AJ Bell, which of those monies weren't already in drawdown. That's important because without that information,

Aviva wouldn't have been able to determine what entitlement Ms W had to access tax-free cash from those monies in the future.

I don't think there's any dispute that Aviva chased AJ Bell (by both email and telephone) on a number of occasions to ask them to update the Origo request. I also think that given Aviva weren't in receipt of the information that they needed from AJ Bell in respect of the first tranche of funds (that they received on 26 October 2022), they had little choice but to return those monies to AJ Bell when they did. Failure to have done so would have likely resulted in Aviva finding itself in breach of the regulator's CASS 7.13.36R rule (which states client monies must be allocated to the individual consumer promptly and no later than 10 business days following receipt). Whilst Aviva knew those monies belonged to Ms W, given they couldn't correctly distinguish which funds hadn't been crystallised, I don't think they acted unreasonably in respect of the first slice of funds (£264,997.58) because they were unable to add those monies to her plan at that point – 9 November 2022.

However, I don't think it's as simple for the second tranche of monies - £54,618.34 - that was sent to Aviva on 27 October 2022. When Aviva spoke to AJ Bell on 10 November 2022 to explain that they were planning on returning the second tranche of funds to them because they were still waiting on Origo being updated, AJ Bell asked them to send in their request to them by email. AJ Bell committed to responding to Aviva within an hour.

Aviva telephoned AJ Bell at 09:32 on 10 November 2022 to try and resolve the switch. AJ Bell asked Aviva to send them an email confirming what actions were outstanding. So, Aviva emailed AJ Bell at 09:52 the same day and 30 minutes later, at 10:22, AJ Bell responded with the information that Aviva had asked for. Despite this, at 10:37, Aviva started the process of returning tranche two of the funds back to AJ Bell. Aviva explained that they started the process at this point because they wanted to be sure that the monies would leave before the banking cut off times for the day. However, I think that's problematic because having been told at 09:32 by AJ Bell that they would prioritise a response within the hour, I would've expected Aviva to have waited at least the full 60 minutes before proceeding with the returns process, but in any event, AJ Bell responded prior to Aviva starting the return. And, whilst I appreciate Aviva's keenness to ensure that they didn't fall foul of the regulator's CASS rules by holding on to tranche two of the funds beyond 10 business days, I well suspect that they could have left leaving keying the returns for several hours more and still have met the banking cut off time. That's especially true when I look back at their actions the previous day when Aviva waited until 11:09 to return the first tranche, so it seems they could have held off returning the second set of monies until later in the morning without incurring any risks to themselves.

I understand that Ms W's pension with AJ Bell was comprised of four pots, £210,151.46, £38,317.92, £54,846.12 and £16,300.42 - the first three pots were in drawdown with the latter uncrystallised. Aviva have said that there was no way for them to apply the second payment (£54,618) that they received on its own, even with the correct crystallisation details received. That's because, they say, they can't apply part of a crystallised transfer without knowing when or if the remaining funds of the same transfer can be applied. It seems that the £54,618 represented pots two and four and the first, original payment (of £264,997.58), represented pots one and three. Whilst I understand Aviva's contention, when AJ Bell resubmitted the payments back to them, they did so in two payments, £210,151.46 (covering pot 1) and £109,464.46 covering the remaining three pots. So, despite what Aviva says, it seems that they were able to process those receipts which contained the monies from differing multiple pots without too much effort.

Given Aviva returned the second tranche of monies unnecessarily, Ms W had to wait longer than necessary to invest her pension fund and as such, I'm of the view they are accountable in part for the losses that she suffered following their actions for the monies received under

tranche two. I therefore require Aviva to take the following actions below to put things right for Ms W.

Putting things right

The role of this service is to resolve complaints quickly and informally, and where we conclude that an error has occurred, we ask the business to put the consumer as close as is reasonably possible back into the same position that they would've been in were it not for the mistake. In setting out the redress approach below, it's important to remember that this isn't an exact science, and I've had to make a number of assumptions about what's most likely to have happened were it not for the mistakes that Ms W suffered as part of the switch process. However, I'm broadly satisfied that what I'm asking Aviva to do is fair and reasonable in the circumstances.

I'm not holding Aviva accountable for the investment losses that Ms W suffered in respect of tranche one.

The second tranche of monies (£54,618.34) were received by Aviva on 27 October 2022, and I believe that were it not for the mistakes encountered, those funds would have been available for investment on 1 November 2022. AJ Bell returned the funds to Aviva via CHAPs on 16 November 2022 and therefore, I'm of the view that Ms W suffered a delay of 11 working days, but not all of those delays are attributable to Aviva.

Had Aviva waited for the information that they requested from AJ Bell on 10 November 2022, I think it's at this point that Ms W's investment losses could've been mitigated by them. It therefore follows that I'm holding Aviva accountable for the lost investment growth between 10 November and 16 November 2022 (when the funds were actually received) – or four working days or 36% of the total delay.

- Compare the performance of Ms W's Aviva pension with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.
- 36% of this loss will be the sum payable by Aviva and to be clear, for the second tranche of funds only.
- Aviva should also add any interest set out below to the compensation payable.
- If there is a loss, Aviva should pay into Ms W's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Aviva is unable to pay the compensation into Ms W's pension plan, it should pay that amount directly to her. 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 Ms W won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Ms W's actual or expected marginal rate of tax at her selected retirement age.

- It's reasonable to assume that Ms W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Ms 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%.

Income tax may be payable on any interest paid. If Aviva deducts income tax from the interest, it should tell Ms W how much has been taken off. Aviva should give Ms W a tax deduction certificate in respect of interest if Ms W asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Aviva pension	Still exists and liquid	The fund(s) that Ms W invested in within her Aviva pension	1 November 2022	Date of settlement	8% simple per year if Aviva have not paid any redress due within 30 days of Ms W accepting the final decision

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the value of Ms W's investment would have been worth had it produced a return using the benchmark.

Any additional sum paid into the pension should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distributions paid out of the investment should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Aviva totals all those payments and deducts that figure at the end.

Why is this remedy suitable?

I've chosen this method of compensation because this will compare Ms W's actual pension performance with what it would have been worth now, had it not been for the delays.

My final decision

I uphold Ms W's complaint and require Aviva Life & Pensions UK Limited to take the action I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or

reject my decision before 30 April 2024.

Simon Fox
Ombudsman