

The complaint

Mr B has complained that Aviva Life & Pensions UK Limited took too long to complete the transfer of his pension plan. Mr B claims that he was out of the market whilst the transfer was being completed and he has lost money as a result.

What happened

The background to this complaint and my initial conclusions were set out in my provisional decision, which I issued in October 2023.

My provisional decision said:

What happened

Mr B had a Section 32 pension plan with Aviva. The Aviva policy was invested in a with profits fund and contained a Guaranteed Minimum Pension (GMP).

Mr B received recommendations from his financial adviser to transfer his Aviva pension to a pension plan with a new provider in January 2021. Mr B's new pension plan was to be invested into a discretionary managed investment portfolio.

Included with the transfer recommendation that Mr B received from his financial adviser was a letter which said that Mr B's financial adviser had provided him with advice on transferring pension benefits that contained a GMP.

Mr B decided to go ahead with the recommendation he'd received from his financial adviser and he signed the transfer request form in early February 2021.

In February 2021 a bundle of documents was sent to Aviva by Mr B's financial adviser with instructions for the transfer to proceed.

In early March 2021 Aviva wrote to Mr B's financial adviser to thank them for their recent enquiry about transferring Mr B's policy. Aviva's letter also said: "As this policy has a valuable benefit, if the benefits are transferred out now rather than taking a retirement income using Aviva's retirement offering it is a legal requirement to get advice from a regulated FA. A FA will need to complete the enclosed form to confirm that they've given financial advice."

A further bundle of documents was sent to Aviva by Mr B's financial adviser in March 2021. In this bundle was a copy of the letter they'd sent to Mr B in January 2021 which confirmed that they'd given him financial advice on the transfer of his Section 32 policy.

The transfer was completed by Aviva on 17 May 2021. The transfer value paid by Aviva to Mr B's new pension plan was the same amount that had been calculated by Aviva in mid-March 2021. This was £233,810.50.

Mr B complained to Aviva in June 2021 about the time that Aviva had taken to complete his pension transfer.

When the transfer was completed in May 2021 the transfer value paid by Aviva, less an allowance for fees and costs, was invested into a discretionary managed investment portfolio in Mr B's new pension plan. Mr B claimed that because of the time that it had taken Aviva to complete the transfer, he had lost out on investment returns in his discretionary managed portfolio.

Mr B has claimed that because of the delays in Aviva completing the transfer he has lost out on growth of 1.7% within his new discretionary managed portfolio, which Mr B has calculated to be £3,800.

Aviva responded to Mr B's complaint in July 2021. In their response letter Aviva accepted that they did delay the completion of the transfer as they had all the information needed to proceed with the transfer in mid-March 2021. Aviva offered Mr B £200 to cover the inconvenience that he suffered due to this delay.

Aviva also said in their response letter to Mr B that they would complete a loss assessment calculation to establish if Mr B suffered a financial loss due to their delays.

To complete their loss assessment Aviva said that they needed information from Mr B's new pension provider. Aviva has said that they've asked Mr B's new pension provider for this information, but nothing has been received. Aviva therefore haven't completed their loss assessment calculation for Mr B, nor have they said when they will be able to complete the loss assessment.

Mr B wasn't happy with Aviva's response, so he brought his complaint to the Financial Ombudsman Service. An Investigator within the Financial Ombudsman Service reviewed Mr B's complaint. The Investigator's view was that Aviva did now need to complete their loss calculation.

Mr B accepted the Investigator's decision. Aviva responded to say that they thought that the Investigator's view was the same as their own view, but they had not been able to obtain the information needed to complete a loss assessment from Mr B's new pension provider.

Mr B had provided screenshots of his new discretionary managed portfolio as evidence of his financial loss. As I've said above, from these screenshots Mr B had calculated that due to Aviva's errors he had lost out on an investment return of 1.7%.

Aviva said in March 2023 that as they had not received any response from Mr B's new pension provider, they would instead complete a loss assessment based on the information provided by Mr B.

Aviva completed their loss assessment in May 2023. In their assessment Aviva calculated Mr B's loss at £432.03. This had been calculated on the basis that Aviva's errors had delayed the transfer of Mr B's pension by 40 days. Aviva applied the growth rate of 1.7% that

Mr B had calculated as an annual return, so calculated the loss at 40/365ths of 1.7% growth.

Mr B has rejected Aviva's offer. He claims that the growth rate of 1.7% was for the period of delay in completing his transfer and not an annual growth rate. Mr B's complaint has therefore now been referred to an Ombudsman.

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.

Aviva has accepted that they caused a delay in completing the transfer of Mr B's pension. Aviva has also accepted that they had all the information that was needed to progress the transfer in mid-March 2021.

Aviva were sent the information that was needed to complete the transfer of Mr B's pension on 19 March 2021. When one of our Investigator's completed their review of Mr B's complaint, they said that a period of two working days was reasonable for Aviva to have processed the information received and approve the transfer.

The Investigator also said that, in line with Aviva's standard procedure, a further period of five working days would have been reasonable for the transfer to then have completed.

I also think that these timescales are reasonable and fair, and I think that this would have resulted in Mr B's transfer from Aviva to his new pension provider being completed on 30 March 2021. However, Mr B pension transfer wasn't completed by Aviva until 17 May 2021.

Aviva has agreed that Mr B should be compensated for any financial loss that he's suffered due to their delays. However, although Aviva agreed in July 2021 that they would complete a loss assessment, no progress was made in completing this assessment.

Aviva subsequently agreed to accept investment returns provided in screenshots by Mr B to complete a loss assessment but have used this information to calculate Mr B's loss as an annualised return, which Mr B has rejected.

I therefore don't think that there is any dispute between the parties that Aviva delayed the transfer of Mr B's policy, or that Mr B should be compensated for any financial loss that he's suffered.

However, a financial loss assessment has not been completed and I don't think it's fair or reasonable for Mr B to suffer any further delays in having a loss assessment completed. I therefore think that Aviva should now complete a loss assessment and then compensate Mr B if he has suffered a financial loss.

Aviva have offered Mr B a payment of £200 to compensate him for the inconvenience that he has suffered due to their errors. However, due to the additional delays and uncertainty that Mr B has suffered I think that a payment of £300 to compensate him for distress and inconvenience would now be fair and reasonable.

Putting things right

I think it's reasonable for Aviva to put Mr B back in the position he would have been in, as far as reasonably possible, had it not been for the delay in Mr B's pension transfer being completed.

Aviva should therefore make an assessment to consider what, if any, losses Mr B suffered due to the delay in completing his pension transfer.

But Aviva have said that they have asked for information to complete a loss assessment from Mr B's new pension provider, but no information has been received. Aviva first offered to complete a loss calculation in July 2021.

Aviva offered Mr B compensation of £432.03 in March 2023, which they calculated by using an annualised return which they had based on information provided by Mr B. However, Mr B has rejected Aviva's calculation.

I therefore think it's fair and reasonable for Aviva to use a proxy index to complete the loss assessment for Mr B.

Aviva should therefore now complete the following calculation:

- The transfer value paid by Aviva to Mr B's new pension plan on 17 May 2021 was £233,810.50. Mr B has said that when the transfer was completed, £8,000 was deducted to cover fees and costs, meaning that £225,810.50 would be left to be invested into his discretionary managed investment portfolio. This is figure "X".*
- Aviva should calculate the notional value of Mr B's new pension plan had the transfer proceeds (after fees and costs) of £225,810.50 been invested from 30 March 2021 (which is the date that the transfer should have happened) to 17 May 2021 (which is the date that the transfer completed and which I will call the "end date"). Aviva should assume these transfer proceeds of £225,810.50 would have been invested in line with the following benchmark: the FTSE UK Private Investor Growth Total Return Index. This is figure "Y".*
- The notional value ("Y") should be compared with the actual post fees transfer proceeds ("X"). If the actual value ("X") is greater than the notional value ("Y"), no compensation is payable. If the notional value ("Y") is greater than the actual value ("X"), there is a loss and compensation is payable.*
- If, having completed their calculations, Aviva identify a loss they should also pay interest on this loss, calculated from the end date to the date of settlement at 8% simple.*

If there is a loss, Aviva should pay into Mr B'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.

Mr B has said that his preference is that any compensation and interest should be paid into his pension plan. I think it's reasonable that Aviva should follow Mr B's preference. However, 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 Mr B's pension plan, it should pay that amount directly to him. But had it been possible to pay into the pension 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 Mr B won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age. Mr B has said that he is a 40% income tax payer and he does not expect this to change in the future.

However, if Mr B 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 30%.

Aviva also need to pay Mr B £300 for the distress and inconvenience he has suffered due their delays in completing the transfer, as I've said above. Aviva have offered Mr B a payment of £200, so if this sum has already been paid to Mr B, then Aviva should pay Mr B a further £100 so that the total compensation paid is £300. However, if Aviva have not yet paid Mr B the offered compensation of £200 then they should now pay him £300.

Why I think that this remedy is suitable?

I've chosen this method of compensation because Mr B transferred his pension to a discretionary portfolio. The list of investments in his new arrangement is extensive and most likely to change on a regular basis in line with market conditions.

My current view, therefore, is that trying to replicate what he would have invested in had he been able to transfer earlier is impossible to assess and would be unnecessarily time consuming for Aviva to calculate anyway.

Mr B has provided screenshot information of his discretionary managed portfolio from after his Aviva pension transfer was completed.

This screenshot indicates that 68% of Mr B's discretionary portfolio was invested in equities, with most of Mr B's equity holdings invested outside the UK. Approximately 36% of Mr B's discretionary portfolio was invested in North American equities. The balance of Mr B's portfolio was invested in Bonds, Alternatives and Cash.

We're an informal dispute resolution body. With all this in mind, I consider using the FTSE UK Private Investor Growth Total Return Index as a proxy for the returns Mr B would have achieved is fair and reasonable.

The FTSE UK Private Investor Growth Total Return Index is made up of a range of indices with different asset classes and I think is a fair measure for someone who was prepared to take risk to get a higher return, which given that Mr B's new pension is invested into a discretionary portfolio, as outlined above, I think would be a reasonable description of Mr B.

My provisional decision

My provisional decision is that I uphold Mr B's complaint against Aviva Life & Pensions UK Limited and Aviva Life & Pensions UK Limited should compensate Mr B as I have detailed above.

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.

Both Mr B and Aviva have responded to my provisional decision.

Mr B has said that he has reviewed the decision and has no further points to make or any additional information to provide.

Aviva has said that in the final response letter they issued to Mr B, they offered to pay him compensation and to complete a loss assessment calculation, and that they would write to Mr B's new pension provider to ask for details of how the transfer value was invested once it was paid into B's new pension plan.

Aviva has further said that they once they had written to Mr B's new pension provider, they would usually expect to receive a copy of the contract notes for the funds purchased within Mr B's new pension plan.

Aviva has further explained that they think the only way to accurately calculate if Mr B has suffered any loss would be for them to be in receipt of the relevant contract notes. Aviva has also said that this would allow them to complete their loss assessment using the current value of Mr B's new pension plan investments.

Aviva has gone on to say *"There has been some reluctance to provide these contract notes and in order to settle the complaint, the business agreed to assess loss based on 1.7%. This was completed as requested but has been rejected"*.

I think that Aviva are saying that the information that they asked Mr B's new pension provider for in July 2021 was the contract notes that they are now referring to. I also think that Aviva are saying that without these contract notes, an accurate loss assessment cannot be completed.

But Aviva first asked Mr B's new pension provider for the contract notes in July 2021. Aviva has said that they have not received the contract notes. I've also not seen any evidence to show when Aviva is likely to receive this information.

Because Aviva hadn't received the information that they'd asked Mr B's new pension provider for, they agreed in March 2023 to accept the evidence that Mr B provided. This evidence was screenshots of Mr B's new discretionary managed portfolio. As I said in my provisional decision, Mr B had calculated that due to Aviva's errors he had lost out on an investment return of 1.7%.

Aviva completed a loss assessment in May 2023 based on the evidence provided by Mr B. But they applied the growth rate of 1.7% as an annual return, whilst Mr B has claimed that the growth rate of 1.7% was for the period of delay in completing his pension transfer and was not an annual growth rate. Mr B rejected Aviva's calculation.

As I said in my provisional decision, we're an informal dispute resolution body. Aviva has set out in their response that they think that any loss assessment should be based upon evidence in the form of contract notes provided by Mr B's new pension provider. But as I've said, Aviva first asked for this information in July 2021 and I've not seen any evidence to show when the contract notes are likely to be provided by Mr B's new pension provider.

Aviva has said that if they had received the contract notes from Mr B's new pension provider when they first asked for them, they would have able to resolve Mr B's complaint quickly with a standard loss assessment.

I think that would likely have happened, but Aviva didn't receive the contract notes quickly and are still waiting for them. I think that if a loss assessment calculation is only to be completed using contract note evidence, then Mr B could have an indefinite wait for such an assessment to be completed. I don't think that this would be fair or reasonable.

I therefore still think that, on balance, it's reasonable for Aviva to complete a loss assessment calculation now.

As contract notes have not been provided by Mr B's new pension provider, then I think it's reasonable that a loss assessment calculation should now be completed by Aviva using a proxy index for the returns Mr B could have achieved, as I'd set out in my provisional decision. I think that this will allow for the loss assessment to be completed now.

I therefore think that, as both parties have responded to my provisional decision, and no new information or evidence has been presented which has changed my view, then my decision remains the same.

Putting things right

Aviva should now complete the loss assessment calculation and compensate Mr B as I'd set out in my provisional decision above.

My final decision

My final decision is that I uphold Mr B's complaint against Aviva Life & Pensions UK Limited and Aviva Life & Pensions UK Limited should compensate Mr B as I had detailed in my provisional decision above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 December 2023.

Ian Barton
Ombudsman