

The complaint

Mr S and Mrs S complain about Aviva Life & Pensions UK Limited's administration in relation to the surrender of Mrs S's Flexible Bond. They say that delays and failings on Aviva's part have caused a financial loss, as the value of the investment had reduced by over £3,000 by the time the surrender value was eventually paid on 18 January 2023.

What happened

Mrs S took out the Flexible Bond through Birmingham Midshires in 1997. It had an initial single premium payment of £18,947. It was a unit-linked bond, operating on a with profits basis and was taken out for the benefit of Mrs S's children – Mr S and his brother. Both children were set up as lives assured for the investment with Mrs S as a trustee. The administration of the bond was later taken over by Aviva.

Mrs S first enquired about the investment on 3 June 2022. The correspondence with Aviva was undertaken by her independent financial adviser ('IFA'). At that time, information was sought about the current status of the policy.

On 13 June 2022, Aviva wrote to Mrs S to confirm it had released policy information to the IFA. In this letter it used an incorrect postcode for the IFA. However, a copy was issued by email four days later. The value of the investment was £61,878 - less any possible market value reduction ('MVR') upon surrender and subject to an estimated final bonus value.

On 21 June 2022, Aviva sent the IFA further information about the bond's transaction history through postal correspondence – and it again used an incorrect postcode. That same day it sent policy information and a valuation statement to the IFA – at a different postal address, which was also incorrect.

On 17 August 2022, Aviva discussed with the IFA about assignment of the policy by telephone. At that date, the policy value was £61,246.

On 30 August 2022, Aviva issued deed of assignment forms to the IFA. However, it again used an incorrect postal address – relying on the head office for the IFA rather than the direct office address.

On 15 September 2022, the IFA called Aviva to explain the information sought regarding the surrender of the policy hadn't been received by post or email. During that call, the IFA reconfirmed the correct postal address.

Aviva explained that it had some issues with emails being received by the IFA's business. It therefore reissued all of the relevant correspondence to the IFA to the correct postal address on 16 September 2022 and copied its communications to Mrs S.

On 20 September 2022, Aviva sent hypothetical chargeable gain information to the IFA – at the correct address.

On 7 November 2022, Aviva issued a valuation update to Mrs S and the IFA. It confirmed

the policy's value as £61,633.42. That included a final bonus of £18,840.79, which could be reduced by a yet-to-be-confirmed MVR.

On 8 December 2022, the IFA called Aviva and asked for it to reissue surrender forms for Mrs S's investment. Aviva correctly sent these to the IFA, and they were received back by Aviva on 28 December 2022.

Aviva was in a position to pay the surrender on 4 January 2023 but there was an issue with account verification for money laundering purposes. It therefore asked Mrs S for evidence, and she provided a copy of a blank cheque that same day in order to confirm her account details. However, the request wasn't processed until 16 January 2023, at which time Mrs S called Aviva to ask what was happening with the surrender. Thereafter, a final surrender value of £58,522.32 was issued from Aviva to Mrs S on 18 January 2023 by bank transfer.

Mrs S then sent Aviva a complaint by email in March 2023. She said that from 13 June 2022 onwards, Aviva had unreasonably delayed matters and this had caused a financial loss. Mrs S says Aviva initially paid her a further £50 in recognition of the upset she had been caused. She then referred the complaint to this service.

On 15 May 2023, Aviva issued a final response to the complaint. It said that to apologise for not keeping Mrs S up to date throughout the process and to account for the trouble and upset she had been caused, it was prepared to pay her £100 compensation.

On 18 October 2023, Aviva conducted a routine audit of its complaint handling and noticed it had not sent Mrs S the £100 it promised on 15 May 2023. It therefore sent her this delayed payment along with a further £100 to account for the time taken to provide compensation for the upset caused to Mrs S.

An investigator reviewed the complaint and felt it ought to succeed in part. He said that he agreed with both parties that delays were caused by Aviva from 13 June 2022 until 16 September 2022. He also agreed with Aviva that he could not identify any further delay it had caused from that point forwards. However, he noted there was a final delay between 4 January 2023 and 18 January 2023, caused by Aviva sending Mr and Mrs S a void cheque.

Our investigator believed that the drop in value of the investment that Mr and Mrs S sought as redress now related to the delays from November 2022 onwards – and these weren't the fault of Aviva. He did, however, believe Aviva ought to calculate if the investment value had fallen from 4 January 2023 – when the surrender value could have been paid. He also felt that the payment Aviva said it had made (a total of £200) for the upset caused to Mr and Mrs S was appropriate in the circumstances.

Mrs S said she and Mr S disagreed. Mrs S made a number of further written submissions which I have read in full. In summary, she noted:

- Aviva has contended information was sent to the wrong address for the IFA – but this isn't correct.
- Information was received but Aviva failed to provide adequate responses to the IFA's questions, and this went on from June to September.
- The distress and inconvenience payment Aviva said it made on two occasions didn't total £200 – it was £250, with £200 appearing in Mrs S's bank account in October 2023 without further explanation.
- After complaining in January 2023, Mrs S was sent the further £50 compensation by Aviva.

- Aviva didn't issue a blank cheque – Mrs S was asked to send one to Aviva for proof of identity.
- Mrs S concedes she and her children were not in any rush for the funds – they had been invested for over 25 years – but that doesn't entitle Aviva to unreasonably delay matters either.
- The investment had never dropped in value by as much as £3,000 at any time since it began.
- Though Aviva's call handlers were polite, the service Mrs S received is unacceptable.
- The investigator had made a number of discrepancies when looking at the complaint, and both Mrs S and Mr S feel it ought to be passed to an ombudsman.
- Ultimately, £250 is not a sufficient sum to represent the loss in investment value they have suffered due to the inefficiency of Aviva's operations.
- In Mrs S's view, the entire period of delay runs from June 2022 to January 2023 and they ought to be compensated for that loss now.

Our investigator made some further comments but wasn't otherwise persuaded to change his view on the complaint. He said:

- The information he had seen related to Aviva holding an incorrect postal address for the IFA, but either way, he agreed with Mrs S that delays had been caused by Aviva up to 16 September 2022.
- During that period, the bond did not fall notably in value.
- The compensation he had referred to was the £200 paid in October 2022.
- He recognised he had misunderstood the issue with the cheque, but in any event, he felt Aviva had acted wrongly. It had accepted how Mrs S's investment surrender value could have been issued two weeks earlier.
- He otherwise remained of the view that the delays from 16 September to 4 January 2023 were not Aviva's fault – instead Mrs S had been liaising with her IFA in respect of the surrender. It was during this period that the investment value fell, and therefore Aviva was not liable for that fluctuation.
- Aside from the two-week delay, Aviva had fairly surrendered Mrs S's investment bond at the correct value in January 2023.

Mrs S said she and Mr S still disagreed and they remained of the view that Aviva had messed them around from June 2022 to January 2023. It could have surrendered the investment in September 2023, but failed to do so. Mrs S also felt the issues relating to the January 2023 delay were irrelevant; instead, the full delay ought to be accounted for.

Aviva had no other comments to make. The complaint has now been passed to me.

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 considered the evidence carefully, I agree with the outcome reached by our investigator and for principally the same reasons.

It may help Mrs S if I explain that though I've included a chronology of the complaint in the 'what happened' section of this decision, I won't be addressing every individual submission Mrs S has made in turn. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

The Financial Ombudsman Service provides informal dispute resolution. My remit is to make findings on what I believe to be fair and reasonable to both parties in the circumstances and this does not follow a prescribed format. Instead, I will set out my reasons for my findings on what I consider to be the central issues in this complaint, based on the evidence before me.

It's also important for me to point out that we do not act in the capacity of a regulator. That means our decisions don't ordinarily interfere in how a business may conduct its operations or exercise what may be commercial judgment decisions. That remit falls to the Financial Conduct Authority.

Mrs S accepts that the IFA was receiving some information by email. That notwithstanding, Aviva initially sent information out to the IFA from June to August 2022 to the wrong postal address. It was only when the IFA sought to clarify matters on 15 September 2022 that all of the previous information was resent.

However, I do not agree with Mrs S and Mr S that any firm action had been taken with the policy such that any surrender values during this period could reasonably have been paid to Mrs S. That is because the IFA was in contact with Aviva before all of the written correspondence was resent in September 2022.

It is clear from the evidence of the call made to Aviva by Mrs S's IFA on 17 August 2022 that more information was needed about the policy and how it operated. The IFA confirmed at that time how Mrs S had been considering assigning the segments within the policy to her two sons, split equally. Further questions were also asked about hypothetical chargeable gains and how assignment of the policy may work going forwards. It is for this reason that Aviva sent the policy information to the IFA on 30 August 2022, noting *"we now enclose two copies of our specimen draft Deed of Assignment for consideration by yourselves and your own independent legal advisers. Clearly, these forms may well require amendment to suit your specific circumstances but they may be of some use as general forms of precedent"*.

At the time of the original request for policy information in June 2023, the policy's assumed final value was £61,878. This reduced to £61,246.62 in August 2022, and by November 2022 was £61,633.42. By the time of the surrender on 18 January 2023, the value had fallen to £58,522.32. It does not appear that a MVR was applied.

I have considered that, if Mrs S and her IFA had all of the relevant information in June 2022, whether the investment could have been surrendered any sooner. But I do not believe this was the case. By mid-September 2022, the IFA and Mrs S had all of the relevant policy information regarding a possible assignment of the policy and the potential taxation implications of surrender. Despite this, the IFA did not go back to Aviva until 8 December 2022 to confirm surrender forms were required. Aviva acted promptly in response to this request – with the exception of the final verification in January 2023.

Had Mrs S and her IFA made the surrender request in September or October 2022, then I accept that the valuation would have been approximate to the original value given in June 2022. However, Aviva's delay from June to September 2022 occurred at a time when the investment's estimated settlement value had fluctuated by some £632, and by November 2022, approximately £245.

It follows that I cannot agree with Mrs S that the difference between the estimated surrender value in June 2023, and the final surrender value in January 2023 of just over £3,000 should be paid to her as compensation now. As our investigator correctly identified, the fluctuation in the value of the bond occurred after 16 September 2022 which was the point at which Aviva ceased in making any administrative errors. Any additional delay in respect of the confirmation of surrendering the policy was not caused by Aviva – and it therefore isn't

accountable for any negative investment fluctuation for the period in the interim where Mrs S and her IFA were determining the best course of action for the bond.

What this service does is consider if a business has treated a customer unfairly because of actions or inactions. And if it has done so, we then go on to consider what ought to be done to put the mistake(s) right. In this case, that meant Aviva should have sent the correct information to the right address to Mrs S's IFA at the earliest opportunity, to enable their consideration of the options with the investment going forward.

I agree that Aviva made several administrative errors spanning a three-month window in 2022 and a further delay in January 2023 of two weeks. For the reasons I have already given, I do not believe the first set of mistakes caused any financial loss. However, the latter delay may well have resulted in a lower settlement value – this is yet to be calculated by Aviva and I will address this in the 'putting things right' section of my decision below.

As well as putting right any financial losses in a complaint (though I have not seen any evidence of losses in this circumstance bar a potential loss in the final surrender value delay in January 2023), we also consider the emotional or practical impact of any errors on a complainant. In doing so, we do not fine or punish businesses; as I explained earlier in this decision, the FCA undertakes the role of regulator.

Considering the impact of the error, I believe the payment made in October 2022 of £200 was reasonable in circumstances where Aviva had failed to send the required information about the investment and possible options regarding assignment to Mrs S's IFA on multiple occasions. The cumulative effect of this was that Aviva did not provide a substantive reply for several months. This caused Mrs S notable upset and frustration as well as requiring a reasonable amount of effort for the IFA to sort out.

Likewise, Mrs S said Aviva sent her a further £50 to reflect the impact of the delay in January 2023. Again, I find this to be a reasonable offer, taking into account the shorter period for the impact of Aviva's further error in delaying payment of the surrender value.

Though I note Mrs S believes otherwise, I consider that Aviva's compensation offer is an appropriate sum to reflect the consequences of an error of this nature. The award does not constitute financial loss relating to the investment and is purely reflective of the inconvenience caused to Mrs S by Aviva's actions. I do not believe any further award should be made. It may be helpful for Mrs S to review to the guidance available on our website around the amounts and types of awards made in instances of upset, trouble, inconvenience and distress caused by businesses in the complaints we see at this service.

Putting things right

I believe that Aviva has taken reasonable steps to resolve the complaint, by apologising to Mrs S and sending her a total of £250 for the upset she had been caused by combined impact of its mistakes. I think this total offer is fair in all the circumstances and Aviva does not need to pay any further compensation to Mrs S.

However, Aviva has not determined if the delay from 4 January 2023 (when settlement could have been made) to 18 January 2023 (when settlement was actually made) caused Mrs S any financial loss on the final surrender value for the investment. It therefore ought to undertake this redress calculation now by deducting the 18 January 2023 settlement value from the value it would have been at 4 January 2023. If the calculation determines a higher surrender could have been paid on 4 January 2023, Aviva must pay the difference to Mrs S along with 8% simple interest to the date of settlement.

If Aviva considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mrs S may be able to reclaim the tax paid from HM Revenue and Customs, if applicable.

My final decision

For the reasons explained, I uphold this complaint. I direct Aviva Life & Pensions UK Limited to undertake the calculation I have set out above in respect of establishing if Mr and Mrs S suffered any financial loss for the two-week delay in providing a surrender value for the policy in January 2023. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 29 May 2024.

Jo Storey
Ombudsman