

## **The complaint**

Mr and Mrs A complain that they've been financially disadvantaged by Aviva Life & Pensions UK Limited ('Aviva') because it told them that their investment withdrawal payment would be one amount when in fact it paid them a lower amount. Mr and Mrs A want Aviva to honour the original withdrawal amount it confirmed and so pay the difference between what they were told they would receive and what they actually received.

## **What happened**

The following is a summary of the background leading up to this complaint.

On 24 March 2023, Mr and Mrs A, through their financial adviser, submitted a request to fully encash their savings plan using the Aviva online platform. Confirmation of the request was acknowledged via the platform at 11:05am. Aviva also generated a payment letter the same day, which said the single payment amount was £130,202.37. It said that assets usually take five days to sell and once sold the payment would be made to Mr and Mrs A's bank account the following day.

On 28 March 2023, Mr and Mrs A's financial adviser phoned Aviva to clarify the payment due because the pending transaction shown on the platform was for a different and lower amount. Aviva confirmed in the call that the payment would be for the amount shown on the payment letter. Later the same day, Aviva phoned Mr and Mrs A's adviser to say that it had provided a wrong figure in the earlier call. They said due to a market fluctuation, the payment amount was in fact £129,445.64, which Mr and Mrs A would receive on 31 March 2023.

Because Mr and Mrs A had already been told by their financial adviser that they would receive the higher amount, they complained to Aviva. They said there was no risk warning on the payment letter that the final amount might be lower, so they asked it to honour the original amount and pay them the difference.

Aviva issued its final response to the complaint on 28 July 2023. In summary it apologised for the confusion caused. It said that it accepted the payment letter was ambiguous and could be viewed as confirmation of the amount that was going to be received. It said that it had arranged for a small change to the wording of the letter to be made. It said that in recognition of the trouble and upset caused, it offered Mr and Mrs A £200. But it said it had no control over market fluctuations. It said the assets were sold correctly and Mr and Mrs A received the correct investment value, so it had not made an error here.

Dissatisfied with its response, Mr and Mrs A brought their complaint to us with their adviser acting as their representative.

One of our Investigators looked at what had happened and they concluded that the £200 offered by Aviva was a fair settlement. They said they agreed that the payment letter Mr and Mrs A received could've been clearer and that they were likely disappointed by what had happened. But they said they were satisfied Mr and Mrs A had received the correct payment for their encashed investment, so they hadn't suffered a financial loss. For this reason, they said it wouldn't be fair to ask Aviva to pay Mr and Mrs A the difference between

the two figures.

Mr and Mrs A disagreed. They said they were given factual information twice. They said there were no risk warning given on the letter saying the value could change between settlement and it wasn't until Aviva realised it had made a mistake that it got in touch. They repeated that they were seeking the amount Aviva told them they would get.

The Investigator said it wasn't disputed that the payment letter didn't say the value could fluctuate. But they said Mr and Mrs A would never have received the higher amount, so they wouldn't be asking Aviva to honour it.

Mr and Mrs A's representative asked the Investigator whether they'd considered if Mr and Mrs A may have reconsidered their decision to encash their plan if they knew the value would fluctuate. And they repeated the point about Mr and Mrs A being told exactly what value was due to them.

The Investigator wasn't persuaded to change their opinion. And they added they were satisfied the evidence showed Mr and Mrs wanted to encash their plan.

Mr and Mrs A's representative then raised a further point. They said the withdrawal trade was placed at 11:05am on 24 March 2023, which was well before the fund cut off time of 4pm. And they enclosed a copy of the 'Order of Execution' document which they said clearly showed that trades would only be rolled over to the next day if instructions were received after that day's cut off. So they said, rather than 27 March 2023 when the trade took place, it should've happened on 24 March 2023.

The Investigator said that it had referred to Aviva for clarification. And it said that the cut off time for the fund was 11:00am. So as Mr and Mrs A's request was placed after the cut off, the trade was carried out the next working day. The Investigator said Aviva had referred to and provided a copy of the group prospectus for the fund. And while this showed a cut off time of 12:00pm, they said Aviva explained this was because this was the time for Aviva Investors, which is an external company to the Aviva platform. So they said to ensure the group cut off time is met, they use a time of 11:00am.

Because Mr and Mrs A continued to disagree, the complaint was referred for a final 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've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

Having done so, I reached the same overall conclusion as the Investigator and for broadly the same reasons. My reasons are set out below.

Mr and Mrs A's representative has repeatedly made the point that Aviva provided Mr and Mrs A with incorrect factual information – verbally and in writing – about the amount they were going to receive from the withdrawal of their savings plan and that it gave no risk warnings the amount could change. But this isn't in dispute. Aviva has acknowledged and apologised for its mistakes. It accepts that the payment letter it issued was ambiguous – it could've been clearer that the payment amount was subject to market fluctuations – and that

its adviser provided the wrong payment information during the first phone call of 28 March 2023. And I agree Aviva could've been clearer with its communication here.

I accept Mr and Mrs A therefore had an expectation about what they would receive from their savings plan based on what Aviva initially told them. Unfortunately, Mr and Mrs A's adviser had already relayed to them Aviva's confirmation the payment amount was £130,202.37 before it realised its mistake and let their adviser know the true lower amount.

Mr and Mrs A's representative says they've been financially disadvantaged as a result. I disagree as I will explain later on. But I do think the errors caused Mr and Mrs A, a degree of distress and inconvenience. Aviva has already offered to pay them £200 in recognition of this. And I think this is fair in all the circumstances. I'll explain why.

In considering a fair award, I'm mindful that Aviva has accepted and apologised for its mistakes. It has also taken steps to correct the ambiguity of the payment letter going forward. I've also taken into account that when Aviva realised it had given Mr and Mrs A's adviser the wrong payment information during the phone call of 28 March 2023, it phoned to correct its mistake later the same day. So, there was no significant delay in communicating its error. I'm also mindful that not all of Aviva's communication about the savings plan withdrawal was ambiguous. For example, the withdrawal confirmation produced following the online request did refer to 'Total estimated amount to withdraw' and 'Current estimated value £130, 202.37.'

So, taking all of this into account, I think an award of £200 to reflect the distress and inconvenience caused to Mr and Mrs A is fair in all the circumstances.

I've considered next whether Mr and Mrs A would've likely acted differently and not gone ahead with the withdrawal of their savings plan at the time, had they been given clearer information about the fact the value could change before settlement. In doing so, I can see that in a record of a phone conversation Aviva had with a colleague of Mr and Mrs A's financial adviser on 29 March 2023, they said the reason for the withdrawal was due to the performance of the plan. I think this suggests that Mr and Mrs A's mind was likely made up and that they would've gone ahead anyway. It's also possible that they received advice from their adviser to encash it. Furthermore, it's possible that any market fluctuation could've resulted in a positive effect on the value of Mr and Mrs A's plan prior to settlement and not just a negative one. So, I'm not persuaded Mr and Mrs A would've likely acted differently had they been given clearer information.

I'll now turn to the matter of whether Mr and Mrs A have suffered a loss as a result of Aviva's mistakes. Mr and Mrs A's representative has said that, because they were told on more than one occasion that the investment withdrawal amount was for £130,202.37, this is the amount Aviva should honour – it should pay Mr and Mrs A the difference between this amount and what they actually received, which represents their loss. They say this is the only reasonable solution.

But I'm not going to tell Aviva to do this. As I've said above, Aviva was wrong to confirm this was the amount Mr and Mrs A would receive. But I'm satisfied the actual amount Mr and Mrs A received from the withdrawal of their plan is what they were entitled to. There is no financial loss here. Mr and Mrs A's loss is one of expectation only.

Mr and Mrs A were not guaranteed to receive £130,202.37. This amount was the estimated value based on the latest available fund pricing at the time the withdrawal instruction was placed. The fund price was subject to change – what Aviva referred to as market fluctuations – between the sell instruction being given and the trade completing. And in my view there is nothing unusual about this. Mr and Mrs A's withdrawal instruction was made on its platform at 11:05am on 24 March 2023. And there is no dispute about this. The trade was placed on

27 March 2023 (the next working day), it completed on 28 March 2023 with settlement on 31 March 2023.

Mr and Mrs A's representative has argued that Aviva made a further mistake – it should've placed the trade on the same day the withdrawal instruction was given (24 March 2023) and not 27 March 2023 because the instruction was given before the fund cut off time. But I'm not persuaded the evidence suggests Aviva acted incorrectly in processing the trade.

Aviva says that the relevant fund cut off time it uses is 11:00am. So, as Mr and Mrs A's instruction was made at 11:05am, which was after the cut off, the trade was placed the next working day. It says that, while the fund's group prospectus shows a cut off time of 12:00pm, this is the time Aviva Investors uses, which is an external company to its platform. It says to ensure that it can aggregate and get the information to the Aviva Investors group in time, its cut off time is 11:00am.

While I've no real reason to doubt what Aviva says, I think it is nevertheless supported by two other pieces of evidence. Firstly, Mr and Mrs A's representative has referred to and provided a copy of Aviva's 'Order of Execution' document, which they say applies to Mr and Mrs A's plan. Section 9.4 of this document says: 'Trades are aggregated according to the dealing times of the specific fund manager. As fund managers have cut off times for accepting deals, Your orders will be aggregated at our aggregation time closest to that fund cut off. Current aggregation times are 9:00am, 10:00am, 11:00am, 3:00pm and 4:00pm.'

So, on the basis that the Aviva Investors fund cut off time relevant to Mr and Mrs A is 12:00pm, an aggregation time of 11:00am is the closest to the fund cut off. Because Mr and Mrs A's withdrawal instruction was placed at 11:05am, which was after the 11:00am aggregation time, I think this is why Aviva placed Mr and Mrs A's deal the next working day.

Secondly, referring back to the initial platform confirmation withdrawal request I discussed earlier, I can see this says that Mr and Mrs A would receive payment in six days – i.e. 31 March 2023 – which supports that the trade was due to take place the next working day and not the same day because it had not met the relevant cut off time.

So, I've not seen enough to persuade me that Aviva made an error here and that it should've used the fund price as at the close of business on 24 March 2023 rather than 27 March 2023 as Mr and Mrs A's representative argues. This means I think Mr and Mrs A received the correct value following the withdrawal request of their savings plan.

Overall, I accept Mr and Mrs A have suffered a degree of distress and inconvenience due to the incorrect and ambiguous payment information Aviva provided. But I'm satisfied Mr and Mrs A have not been financially disadvantaged here because they received the correct amount from the withdrawal of their savings plan. Mr and Mrs A's loss is one of expectation only.

### **Putting things right**

Aviva should pay Mr and Mrs A £200 for the distress and inconvenience caused by this matter.

### **My final decision**

Aviva Life & Pensions UK Limited has already made an offer to pay £200 to settle the complaint. And for the reasons above, I think this offer is fair in all the circumstances.

So, my decision is that Aviva Life & Pensions UK Limited should pay Mr and Mrs A £200.

I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A and Mrs A to accept or reject my decision before 22 April 2024.

Paul Featherstone

**Ombudsman**