

The complaint

Mrs W complains that Aviva Life & Pensions UK Limited (Aviva) mismanaged her pension, causing a financial loss. She doesn't feel that it has fairly calculated the compensation for the delay it acknowledged it caused in respect of her instructions to withdraw her pension from it in 2023.

Mrs W is being represented in her complaint. But I'll only refer to her in my decision.

What happened

Mrs W had a pension plan with Aviva. I understand that the pension started on 1 January 2009, and that it was originally taken through a workplace scheme, with the funds being chosen by the scheme. The funds chosen were the Aviva Deposit S6 fund and the Aviva Long Gilt S6 fund. I understand that 25% of Mrs W's funds were invested in the Aviva Deposit S6 fund, with the remaining 75% invested in the Aviva Long Gilt S6 fund.

I understand that Mrs W contacted Aviva on 10 February 2023 as she wanted to withdraw 25% of the value of her fund as Tax-Free Cash alongside a further £10,000. She then wanted to receive the remaining amount at the start of the next tax year in April 2023.

During the call on 10 February 2023, Mrs W told Aviva that her fund value had gone down by 25% recently. The call handler told her that the long gilt fund she was 75% invested in had a risk rating of 5 out of 7. But Mrs W felt that the fund manager must not be competent. She said she felt that the gilt fund was supposed to be low risk. The call handler provided policy values and stated that the values were subject to change up until the point that Aviva received all required documentation. They also told Mrs W that the quotes Aviva would provide would be sent via DocuSign within five working days, so would need a signature from her to proceed. The quote was sent by email to Mrs W on 14 February 2023.

Mrs W called Aviva again on 8 March 2023 as she hadn't received the quotes that had been issued. She was unhappy that three weeks had passed since she'd asked to cash in her pension, and that her funds had gone down in value. She said she needed the money before the end of March. The call handler said she'd speak to Aviva's retirement centre about this as she didn't deal with the quotes.

Aviva acknowledged Mrs W's complaint on 14 March 2023.

The call handler who'd spoken to Mrs W on 8 March 2023 tried to call her on 14 March 2023. The retirement team had asked her to explain to Mrs W that the payment hadn't been made as she hadn't returned the signed forms. Mrs W's representative called back on 15 March 2023. He said she still hadn't received the forms. As Mrs W wasn't present on the call, the call handler couldn't confirm anything specific about the policy. But she did agree to re-send the email to a different email address to the one that had been used before.

Mrs W received and returned the completed DocuSign and Aviva received it on 16 March 2023. It then processed the surrender on the value from that day.

As Aviva hadn't responded to Mrs W's 8 March 2023 complaint within 8 weeks, it wrote to her on 5 May 2023 to say sorry and to provide referral rights to this service. Mrs W replied the following day to ask when she could expect a response. She felt that the investment managers had a duty of care to ensure losses would be minimal. Aviva said it would add her additional comments to the complaint.

Mrs W called Aviva on 19 May 2023. She said she wanted to take all of her money out of her pension. She felt Aviva had delayed her withdrawal. She also repeated her complaint that her fund value had plummeted. Aviva said that the call handler said she'd have to wait for a quote, which would be sent within five working days. And that payment could take up to 15 days.

Aviva said that the quote was issued on 19 May 2023 by email. But Mrs W said she didn't receive it. So she emailed Aviva to chase the quote on 1 June 2023. Aviva said it reissued the quote on 1 June 2023.

Mrs W emailed Aviva again on 6 June 2023 about her complaint. She was doubtful that Aviva had initially sent the quote. She then escalated her complaint to Aviva's management on 14 June 2023. She was unhappy that her complaint was yet to be assigned to a complaints handler. She said her complaint was about how badly her fund had done, despite being invested in gilts. She also felt that Aviva had delayed both of her withdrawals.

Aviva acknowledged Mrs W's complaint on 15 June 2023, but it couldn't tell her when it would be able to reply to it. It issued its final response to the complaint on 5 July 2023.

Aviva didn't uphold the complaint. It acknowledged that it was upsetting to see the fund value not increase. But said that this was due to market conditions, which were outside of its control. It also didn't think it'd caused delays to the withdrawals. It said it had issued the second quote on the same day it'd been requested by email. And then re-issued it when Mrs W had said she hadn't received it on 1 June 2023. Aviva said it didn't then receive the completed information it needed from Mrs W to be able to proceed with the transfer until 15 June 2023, the date it used to action the request.

Mrs W wrote to Aviva on 6 July 2023 to ask it to provide evidence of the email it said it had sent for the withdrawals. She said she'd not received them and that this had led to the withdrawal being delayed, causing a financial loss.

Aviva wrote to Mrs W with the outcome of its complaint review on 10 July 2023. While it didn't consider it had caused any delays to the first withdrawal, as it said it issued the quote on the same day Mrs W had requested it, Aviva now acknowledged that it had caused a delay on the second quote. It said it should've sent the quote on the day Mrs W had originally requested it. But it didn't issue it until she'd chased it on 1 June 2023. It apologised for not recognising this in its original investigation.

Aviva felt that if it had correctly issued the quote on 19 May 2023, Mrs W would've taken the same amount of time to respond to it as she had taken for the quote it'd issued on 1 June 2023. It said that it received everything it needed to process the requested payment on an effective date of 15 June 2023, which was nine working days after it'd sent the 1 June 2023 quote. Aviva felt this meant that if the quote had been issued on 19 May 2023 it would've been settled on 2 June 2023.

Aviva said that if the payment had been processed on 2 June 2023, then the value Mrs W received would've been £54.46 higher than the actual value she'd received. It also calculated that as a result of its delays she would've been due interest of £27.60. Therefore it felt she'd lost out by a total of £82.06 due to the delays it'd caused. In addition, Aviva

offered Mrs W £150 compensation as further apology.

I understand that Mrs W accepted a cheque for £232.06 from Aviva as a payment on account, not settlement in full.

Unhappy, Mrs W brought her complaint to this service. She said it had taken Aviva several months to admit it had caused delays to her withdrawal. She felt the compensation was inadequate, and that the calculation method for the loss calculation wasn't correct. She also felt that her pension might've been mis-sold. And that the fund had been badly managed.

In further discussion with our investigator, Mrs W said that when Aviva had eventually sent the quote on 1 June 2023, she'd noticed that the pension had fallen by around £600-700 in the last few weeks. She said she hadn't proceeded with the quote straight away as she waited in hope that the losses would be reversed. But by 14 June this hadn't happened, so she sent the instruction. Her representative said he'd been checking the prices through Aviva's online system every other day.

Our investigator felt that the complaint should be upheld. He acknowledged that Aviva had followed this service's general approach to compensation for the delay it had caused. But he felt that if Aviva had sent the quote when it felt it should have on 19 May 2023, Mrs W would've responded more quickly than she had actually responded to the quote she received on 1 June 2023.

Our investigator said this was because he felt that Mrs W had only deferred her response to the 1 June 2023 quote because she was waiting to see if the fund's price would recover after a significant fall in value. He felt that the situation had been different on 19 May 2023 as the unit price had been predominantly falling for a number of weeks. So he felt that on balance it was more likely than not that Mrs W would've actioned a quote sent on 19 May 2023 more quickly than the nine working days it had taken her to action the 1 June 2023 quote.

Our investigator felt that although Aviva had already paid Mrs W £150 for the distress and inconvenience it had caused, this wasn't enough given it hadn't initially recognised it had caused a delay. And because there'd been issues with the way it'd dealt with the complaint. He felt that it should pay Mrs W a further £100 compensation. He also felt that Aviva should use 20 May 2023 as the date it would've received all the necessary documents to action the quote, and that it should use that date - rather than the 2 June 2023 it had used - to calculate and compensate Mrs W for the loss she experienced as a result of its delay.

Aviva agreed with our investigator about the additional £100 compensation he'd recommended. But it wanted him to further explain why he wanted it to change the loss calculation. It wanted to understand why he felt that Mrs W would've acted more quickly if there'd been no delays than she had actually acted. It felt that there was no proof that she would've done. And that it had been consistent in the way it'd assessed loss.

Our investigator acknowledged that there was no proof that Mrs W would have acted more quickly on a quote issued on 19 May 2023 than she had on the one issued on 1 June 2023. But felt that the evidence, including Mrs W's testimony, suggested that she would've. He acknowledged that the 'standard approach' was that the rest of a timeline would have been the same but for the identified delay. And that this service considered that approach to be reasonable in most cases where there wasn't any evidence to the contrary. But he felt he'd explained in his view that when Mrs W received the 1 June 2023 quote and noticed that the fund had experienced a significant drop in value, she'd decided to wait a few days to see if the price would recover. He felt that people did try to time the market, as Mrs W had done here.

Our investigator also noted that Mrs W's testimony was supported by the price movements of the fund. He said that although the price of the fund had generally been falling in the months before, in the last few days of May 2023, the price had been increasing. Therefore he felt that if the quote had been issued on 19 May 2023, Mrs W would've only had the price movements up to that point to base her decision on. He therefore felt that on balance, as the unit price had been consistently falling up to that point, she would've been more likely than not to action the quote as soon as possible.

Aviva felt that what our investigator had said was speculation.

As agreement couldn't be reached, the complaint has come to me for a review.

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 done so, I'm going to uphold it, for largely the same reasons as our investigator. I'll explain the reasons for my decision.

I'd first like to say that this decision will primarily focus on what I consider is the only outstanding issue between Aviva and Mrs W. That is, whether the date Aviva used for its redress calculation is fair.

I say this because I can see that some of Mrs W's other complaint points have now been agreed upon, as follows:

- Mrs W has acknowledged that Aviva didn't delay the first withdrawal.
- Aviva has accepted that it should pay a further £100 compensation to Mrs W for the distress and inconvenience it has caused her. Mrs W has made no further submissions on this point. So I won't further consider this aspect of the complaint.

I also say this because in respect of the further complaint points Mrs W has made:

- I agree with our investigator that there's no evidence that Aviva has mismanaged Mrs W's pension. And that any poor performance of an investment isn't in itself evidence that a fund has been mis-managed. I've also seen nothing to suggest that Aviva managed the fund outside of the stated parameters. I can't usefully add to the explanation our investigator provided on this point. And I can't reasonably uphold this part of the complaint.
- I also agree with our investigator that there's no evidence that Aviva mis-sold the pension to Mrs W. On this point, I endorse Aviva's position in its complaint response that if Mrs W has any concerns about whether or not her pension was mis-sold, she'd need to raise this through her previous employer.
- Although I can see that Mrs W is unhappy with the way that Aviva has handled her complaint, I can't consider this point in my decision. I say this because this service only has jurisdiction to look at points relating to the underlying financial service that the business provided. As this part of the complaint isn't about the provision of, or failure to provide, a financial service, I can't consider it as it's outside the scope of our jurisdiction.

Aviva has disagreed with our investigator's position that Mrs W would've acted much more

quickly than she had actually acted if it'd issued the second withdrawal quote on 19 May 2023. It felt this was speculation. And that it had been consistent in the way it'd assessed loss. So I've gone on to carefully consider this point.

Our investigator provided Aviva with a detailed explanation about why he felt it was more likely than not that Mrs W would've acted much more quickly to provide the necessary documentation needed to process her withdrawal request if the second withdrawal quote had been issued on 19 May 2023.

In summary, he said that the unit price of the Long Gilt S6 fund had predominantly been falling since the time when Mrs W had first contacted Aviva in February 2023. And while it had reached its lowest price during this period at around the end of May 2023, the unit price had then increased for a few days in early June 2023, before then falling again to its end of May 2023 levels by 14 June 2023. He felt this unit price evidence supported Mrs W's testimony about why she'd waited a few days before responding to the quote she'd received on 1 June 2023. And that it also supported his position that she wouldn't have waited if Aviva had actually sent the quote on 19 May 2023, as there'd been no sign of the fund's performance improving at that point.

Our investigator also said that Mrs W had expressed her concern about the fund's performance during calls with Aviva on 19 May 2023. He was therefore persuaded that on balance of probabilities, Mrs W would've responded by 20 May 2023.

Having looked at the performance of the fund in question, I agree with our investigator that, if Aviva had issued the quote on 19 May 2023, there would've been no positive recent fund data for Mrs W to have considered. Therefore there would've been no reason for her to leave her funds where they were for any longer. She'd initially told Aviva she wanted to take the rest of her funds at the start of the new tax year – so early in April 2023. And she'd expressed concerns about the fund's performance on the day she requested the full withdrawal. So I've no reason to suspect that Mrs W would've waited for a few days before providing Aviva with the documentation it needed to proceed with her claim at this point.

However, the performance data later in May and in early-June 2023 is much more mixed. The evidence shows that at the time Aviva actually sent Mrs W the quote on 1 June 2023, the fund's performance had recently improved from its low at the end of May 2023. So I can understand why Mrs W might've waited to submit the necessary documentation at this point. She already felt like she'd lost a huge amount of value in this fund. So she reasonably wanted to wait a few days to see if any of that value would come back.

Therefore, while I agree with Aviva that it was consistent in the way it assessed the loss here, I don't consider that it based that calculation on what Mrs W was most likely to have done in the circumstances. While I accept that we can't know what Mrs W would've done if there'd been no delay, I agree with our investigator that Aviva should redo its loss assessment based on it having received everything it needed to process the second withdrawal payment on 20 May 2023. Therefore I uphold the complaint.

Putting things right

My aim in awarding fair compensation is to put Mrs W back into the position she would likely have been in, had it not been for Aviva's acknowledged delayed provision of the quote. I think this would've meant Aviva had everything it needed to process the second withdrawal payment on 20 May 2023.

I say this because I'm of the view that if Aviva had sent Mrs W the quote she'd requested when it should've done on 19 May 2023, the falling fund values she'd been monitoring

would've led to her providing Aviva with all of the necessary documents it needed to process her claim on 20 May 2023.

Therefore I require Aviva to use 20 May 2023 as the base date for its loss calculations, rather than 2 June 2023. It should then calculate both the financial loss Mrs W experienced as a result of its delay, and the interest due, based on this date. It should carry out this calculation in the same manner as it carried out its previous loss calculation, but with a different base date.

If there is a loss, Aviva must then pay Mrs W an amount reflecting that loss after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mrs W has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

Aviva must also pay Mrs W an additional £100 for the distress and inconvenience caused by the delays. It should also provide the details of its calculations to Mrs W in a clear, simple format.

My final decision

For the reasons explained above, I uphold Mrs W's complaint. I require Aviva Life & Pensions UK Limited to take the steps detailed in the "Putting things right" section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 25 June 2024.

Jo Occleshaw
Ombudsman