

## **The complaint**

Mr M has complained about administrative issues he experienced with Aviva Life & Pensions UK Limited when he was trying to switch funds in which he was invested within his pension plan.

## **What happened**

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

On 10 August 2023, Mr M called Aviva to let it know he would like to switch his funds into a less volatile fund. This was done in preparation of transferring his funds to Standard Life for the purchase of an annuity. The call agent advised Mr M this wasn't possible. So, Mr M settled on requesting the transfer of his funds to Aviva's Cash AP fund.

However, this was overlooked and not picked up until 28 September 2023. Once it was picked up, the correspondence Aviva sent Mr M and his Independent Financial Adviser (IFA) notifying them that a switch to a less volatile fund wasn't available was sent to an incorrect address.

The fact that Mr M had settled on transferring his funds to Aviva's Cash AP fund seemed to have been overlooked, meaning Mr M's funds were subject to market fluctuations.

Mr M's funds then dropped in value.

Prior to the correspondence about Mr M's switch being issued, Mr M completed forms, enabling the transfer of his pension benefits to Standard Life. Confirmation that the transfer had gone ahead was issued on 9 October 2023. Mr M had chosen to release his tax free cash and use the remaining funds to buy an annuity.

The tax free cash released was £13,159 and the amount transferred for the annuity purchase was £39,479.

By 30 October 2023, Mr M and his financial adviser had contacted Aviva to raise a complaint about Mr M's switch request not being actioned and correspondence being sent to an incorrect address.

On 28 November 2023, Aviva issued a final response letter. Aviva apologised for overlooking Mr M's switch request on 10 August 2023 and apologised for advising that a switch couldn't take place on 30 September 2023. This was factually incorrect.

Aviva recognised that Mr M's fund had decreased in value in the time it took them to reply to Mr M's switch request. In light of this, it undertook a loss assessment on the assumption that the switch to cash took place on 10 August 2023. This showed there was a loss of £1,057.

In resolution of the matter, Aviva also said an additional tax free cash sum of £264 would be paid to Mr M directly, and it would write to Standard Life about the remaining balance of £793 to see whether it would accept this and, if so, to let it know the exact amount it needed to put Mr M in the same annuity position he would have been had the correct Open Market Options (OMO) value had been sent.

In recognition of the trouble and upset caused, Aviva also arranged for a payment of £300 to be sent to Mr M's bank account. It further paid Mr M's IFA £212 in respect of the additional work it had undertaken on Mr M's behalf. This was a lower amount, however, than the IFA had invoiced for (£287). Aviva said it had calculated that lower sum due in accordance with the regulator's guidance.

In January 2024, Mr M contacted our service for his complaint to be investigated further.

Mr M said that he agreed to a settlement on the assumption the lost funds would be applied to his Standard Life annuity, but this transpired not to be possible. Mr M added that the funds were simply placed in his account, and that Aviva hadn't contacted him to explain or discuss other options. He said that he'd suffered financially as those additional funds, if applied to the annuity, could have provided a higher return should he live to a good age.

Mr M further said that he'd contacted Aviva several times to speak with the person dealing with his case. But he'd been told that the person was away from their desk or on holiday. Mr M said that none of his calls had been returned.

Having considered the matter, our investigator thought that the complaint should be upheld. He said the following in summary:

- Aviva accepted that Mr M's fund switch should have proceeded at the the time of its request on 10 August 2023.
- Aviva had undertaken a loss assessment using 10 August 2023 as the effective date, which was earlier than the date the investigator would have recommended, but it seemed that Mr M had benefited from that date being used.
- It was unclear as to why Standard Life hadn't been able to receive the additional redress funds, but where a business wasn't able to amend an annuity, this service would ask a business to calculate the purchase price of the difference between he annuity being paid and that which should have been paid. This should then be paid to the consumer with a deduction to reflect the income tax which would have been payable on the annuity income.
- Aviva had calculated a loss to Mr M of £1,057, of which 25% was paid to him as the difference in the tax free cash he would have received. It calculated that, with the 20% income tax reduction on the remainder, £634 was due to Mr M. But this wasn't quite in line with the way in which this service would seek to redress this type of situation.
- The £300 offered by Aviva in respect of the poor service Mr M had received, along with the amount of £212 paid in respect of professional services Mr M had sought to resolve the matter was reasonable in the circumstances. With specific regard to the latter, this service wouldn't normally make such awards if it wasn't a necessity to invoke professional services to resolve matters, the investigator said.

- If Mr M had residual concerns about data protection issues arising from correspondence being sent to the wrong address, these could be referred to the Information Commissioner's Office.

To resolve the matter, the investigator recommended that Aviva calculate the difference in the past payments Mr M had received and those he would have received had the transferred sum been higher. Aviva should pay this to Mr M with a basic rate notional tax deduction to reflect the assumed basic rate tax he would pay on that income.

Aviva should also establish the capitalised value of buying the difference between the future annuity payments Mr M would receive and those he should receive. This should be paid to Mr M, with the same notional income tax deduction.

Mr M said that he trusted the investigator's judgement in terms of the redress proposal, but made the following further points:

- Aviva had itself invited his IFA to submit an invoice for the additional work created by its mistake, and so it seemed only fair for Aviva to meet those additional costs.
- Mr M said that he presumed the annuity rates to be used to determine loss would be those applicable when he secured the annuity, as annuity rates had since dropped. Mr M also queried how HMRC would deal with the deduction of income tax.

The investigator said that the purpose of his recommendation was that Mr M wouldn't be financially disadvantaged by Aviva's mistake, and that as the deduction would already have been made for income tax, Mr M wouldn't need to take further action.

Despite asking for extensions to respond to the investigator's view (which was issued on 23 April 2024), Aviva hasn't replied.

As resolution hasn't yet been agreed on the matter, it's been referred to me for 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.

And having done so, I've reached broadly the same conclusions as the investigator, and for similar reasons.

As there's no dispute as to errors made by Aviva, it's the matter of providing suitable redress which remains to be decided here. And I think the investigator's proposal to ensure Mr M isn't financially disadvantaged is reasonable.

My further view is that, as with the investigator, the amount of £300 is appropriate in terms of the impact the errors are likely to have had on Mr M, and are consistent with the types of award which this service might make in similar circumstances.

And with regard to the amount paid by Aviva in respect of the IFA's professional services, I can see that this has been dealt with as a matter between Aviva and the IFA directly, with payment (of an albeit lower amount than invoiced) having been made directly to the latter.

As with the investigator, this service typically make such awards in situations which would have required specialised services to resolve (so for an example an actuary or accountant) and which couldn't have simply been resolved by referring the matter to this service for

resolution.

This complaint would inevitably have caused Mr M some distress and anxiety, for which the £300 payment referenced above has been made, but although Mr M's IFA may have been involved in the matter from the start, I don't think that the issues here were so complex that they would have necessitated the involvement of a financial specialist to resolve.

And so I don't think it would be fair or reasonable for me to require Aviva to pay the remainder of the invoiced sum.

### **Putting things right**

My aim is to place Mr M in the position he would be now, but for Aviva's errors.

For past payment loss, Aviva Life & Pensions UK Limited should calculate the following:

A) The total of all the notional payments which Mr M should have received from his pension, net of his marginal rate of tax, had the additional sum been received by Standard Life, from the date that the first payment would have been made up to the date of settlement.

B) The total of all the actual payments which Mr M has actually received from his pension, net of his marginal rate of tax, up to the date of this final decision.

Aviva Life & Pensions UK Limited should pay Mr M the difference in those payments, but should also add simple interest at the rate of 8% pa to the difference, from the date that each annuity payment was due, up to the date of settlement.

In working out the net payments, Aviva Life & Pensions UK Limited should assume that Mr M is a 20% rate taxpayer.

I've also noted that, whilst Aviva Life & Pensions UK Limited may have paid Mr M the difference in the tax free cash he should have received, there may have been no interest applied to this for the time in which he didn't have that additional sum.

And so Aviva Life & Pensions UK Limited should also apply 8% pa simple interest on that difference from the date that lower tax free cash sum was paid to Mr M up to the time that the difference was paid to Mr M. To that interest sum should then be added 8% pa simple interest from the date the difference was paid up to the date of settlement.

For the future loss, Aviva should determine, as at the date of this decision, the capitalised cost of buying the difference in the annuity which Mr M should be receiving, had Standard Life received the additional sum. The annuity rate may be different to that used in the original annuity quote – but this reflects the actual cost, as the date of this decision, to buy the difference in the annuity payments.

From that sum may also be deducted a notional 20% income tax deduction.

As set out by the investigator, Mr M won't need to take any action with HMRC regarding the notional income tax deductions.

### **My final decision**

My final decision is that I uphold the complaint and direct Aviva Life & Pensions UK Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 August 2024.

Philip Miller  
**Ombudsman**