DRN-4931982

The complaint

X holds (jointly and severally) a Lasting Power of Attorney ('LPA') for Mrs W.

The complaint is about the experiences faced by X (acting under the LPA) and by Mrs W's Financial Adviser ('FA') when they sought to conduct a withdrawal from her Investment Bond ('IB') with Aviva Life & Pensions UK Limited ('Aviva') in 2023.

X says Aviva placed unreasonable obstacles in his (and the FA's) way as they sought to execute the withdrawal, and that this resulted in an unduly protracted process and in their loss of an investment opportunity aimed at mitigating Mrs W's estate's Inheritance Tax ('IHT') liability.

What happened

The LPA was registered in July 2020. Thereafter, Mrs W was formally diagnosed with a condition affecting her capabilities, and in the summer of 2021 she was moved into residential care.

X explains that he initially decided to make a withdrawal from the IB, in 2023, in order to put its value towards funding the costs of Mrs W' residential care accommodation – especially as the IB had lost considerable value over the previous 18 months.

Aviva notes that X's initial instruction on 27 June 2023 was for a £75,000 withdrawal in relation to the care home costs, then on 3 July he increased the withdrawal amount to £100,000, then on 27 August the instruction was amended again when he asked for a full surrender of the IB for the purpose of reinvestment elsewhere, and then the FA became involved in this respect in late September.

In the main, X describes the following experience – Aviva's request, in July, for a bank statement for Mrs W within the previous three months showing an active transaction within the previous five days; a later request for six months' worth of bank statements for Mrs W; a request for confirmation, from the care home, of her residence there; a second request for the same type of confirmation; then in August, it said the IB could not be surrendered without X providing a breakdown of the care home's costs, of how much money was required for future costs and of how much money would be reimbursing X (and any other relevant person) for covering any previous parts of those costs; then he was told that approval from the Office of the Public Guardian ('OPG') was also required.

X met the requests in July. He considered the requests in August to be unduly excessive and unnecessary, and he says he learnt that what he had been told about OPG approval was false, as no such approval was required for execution of his instruction. He considered that Aviva was acting beyond its role and was essentially policing his interaction with the IB, despite the fact that he held the LPA for Mrs W and was fully and legally entitled to conduct the withdrawal from, and closure of, the IB.

The complaint also refers to the FA's experience in trying to assist in the process. He was advising on the reinvestment of the IB's withdrawn value into a fund designed to assist in

mitigating an estate's IHT liability. In this respect, X says Aviva's behaviour in the matter resulted in Mrs W's estate losing the opportunity to mitigate its IHT liability by around £49,000 and in the loss of potentially better returns from the fund – because the withdrawn money had to be received by 13 October 2023 in order to be invested by the deadline of 18 October 2023, but that did not happen.

X learnt that Aviva's behaviour was influenced by a telephone discussion it had with Mrs W in October 2020.

Aviva cites the contents of the discussion (which was recorded) as grounds on which it reasonably believed Mrs W did not trust X and that she believed she was vulnerable to being defrauded, as she had expressed in the discussion. It says, this report from her about her vulnerability towards fraud, and the context in which she expressed it, triggered its special anti-fraud investigation, at the time it was satisfied that no third-party had access to her IB without her authority, so the investigation concluded on this point. Nevertheless, it gave her assurances that additional safeguards had been applied to her policy to protect it going forward. Aviva says this, in addition to the changing nature of X's instructions in 2023, led to the heightened level of scrutiny applied to the instructions, and to the equally heightened level of safeguarding afforded to the IB in its reaction to the instructions.

X does not consider this to be a credible position. He says Mrs W's capacity was already gravely impaired at the time of the conversation; none of her allegations were true, instead they were a direct result of her lack of (or lost) capacity; the LPA had already been registered, around three months before the conversation, precisely because of concerns about her impaired capacity; Aviva would have known this; furthermore, upon listening to the recording, it is clear that the Aviva official she spoke to mishandled the conversation; the recording depicts irrational behaviours and statements from Mrs W which clearly indicated her lack of capacity and which Aviva ought to have noted; in particular, her final comment in the call illustrated this; as such Aviva did not have grounds, from the 2020 conversation, to mistreat him and the FA (and, despite holding the LPA, unfairly engage with them as though they were potential fraudsters) in 2023.

One of our investigators looked into the complaint and concluded that it should not be upheld. On balance, he was satisfied by the grounds on which Aviva increased the level of safeguarding applied to the IB after the 2020 conversation with Mrs W, and on the grounds it increased the level of scrutiny applied to the 2023 instructions from X. He noted that Aviva mishandled some of its communications on the matter in 2023 in its engagements with the FA, but noted that it has apologised for that and, for that reason, it upheld a separate complaint made by the FA.

With regards to X's claim of financial loss, the investigator said there had been no actual loss; the surrendered capital was released from the IB on 19 October 2023 and was reinvested as intended by X; Mrs W is still alive; and the potential IHT mitigation in the reinvestment is stated as applicable after two years; so, there is no actual loss to redress.

X disagreed with this outcome, maintaining his position in the complaint. He asked the investigator to reconsider the view in the context of the contents of the October 2020 telephone recording. The investigator did not change his view. The matter was referred to an Ombudsman.

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 have reached the same conclusion expressed by the investigator. I do not uphold the complaint. Aside from some avoidable communication issues between Aviva and the FA, as far as the complaint from X and Mrs W is concerned, I do not consider that Aviva did anything wrong.

I have noted X's request for the recording of the October 2020 telephone call to be listened to properly and in full. I have done that, and I understand why he considers it important to do so.

For the sake of maintaining Mrs W's privacy, and maintaining anonymity in the complaint, I will not go into the details of the recording's contents. I consider it sufficient to draw out two main findings from my consideration of those contents, both of which the parties will understand given that they are familiar with the recording.

Mrs W's distress throughout the call is prominent, but from the perspective of an Aviva official who knew nothing about her personal affairs prior to the call I do not consider it fair to expect that the call handler should have taken the view that she was being irrational. In order to have taken such a view he would have needed to know the wider circumstances, including background facts related to what she was saying, whereby what she was saying could then be judged against such knowledge to determine whether (or not) she was being rational. The call handler did not have such knowledge.

Without that knowledge, I do not consider anything meaningful could be picked up from Mrs W's expressions to lead to a suspicion that she was being irrational or that she lacked capacity. She expressed her distress and the reasons behind them emotionally but also coherently, and the emotions she displayed were matched by the nature of the subject she was addressing, so those emotions would not have reasonably been viewed as irrational. She understood and responded, with relevance, to the things the call handler had to say, and she sustained the main purpose(s) of her call throughout.

My second finding relates to the first 10 seconds (approximately) out of the concluding 20 seconds of the conversation. This is the segment that X says particularly illustrated, within the call itself, irrationality and lack/loss of capacity on Mrs W's part. I understand his point and the reason why this section has been highlighted in his argument. What was said in this section was indeed unfortunate. However, taken as part of the entire 22 minutes and 20 seconds long conversation, it is possible to see that the comment made in this section could reasonably have been viewed as a culmination of the emotions that had featured in the earlier 22 minutes. In other words, the comment could reasonably have been viewed as a poor choice of expression in the conclusion of the call resulting from Mrs W having *worked herself up*, emotionally, during the call.

For the avoidance of doubt, I do not seek to justify the comment in any way, and I consider it reasonably clear from my finding above that my focus is on how the call handler would have perceived the call as a whole (including the comment), not on justifying or giving reason for what Mrs W said.

My findings above extend and apply to how other Aviva officials involved in the special investigation after the call would probably have perceived the call's contents. In this respect, I note X's point about the LPA having been put in place around three months before the call, and, unless I am mistaken, he appears to suggest that Aviva would have known about the LPA in 2020 and/or around the time of the call (and, in turn, during any investigation thereafter).

The argument appears to be that Aviva should have determined, in or around its 2020 investigation of the telephone call, that the concerns Mrs W expressed during the call were

unreliable, given her lack (or loss) of capacity, therefore no lingering concerns, or cause for heightened safeguarding (connected to the call), should have existed in 2023 – or, in the alternative, Aviva's awareness of the LPA (with the implication of wilful delegated authority that it carries) in the course of X's 2023 instructions should have been enough to eclipse any such concerns that previously existed in 2020.

On balance, I disagree.

With regards to Aviva's awareness in 2020, I have not seen evidence that the LPA was lodged with it at the time of the October call and/or at the time of its investigation of the call. Indeed, X's submissions, in his January 2024 complaint to Aviva, included the following statement contrasting Aviva's position in 2020 with its position in 2023 –

"*You stated that you had not received any evidence about lack of capacity and so her concerns were taken seriously and additional safeguarding and monitoring was advised. This is true, but AVIVA failed to take simple and pragmatic acts to reassure them that when I requested to withdraw the funds on 7.7.23 that the situation had changed significantly*."

[my emphasis]

This appears to be an acceptance by X that Aviva had not received, at the time of the 2020 call/investigation, the LPA or any other form of evidence of Mrs W's lack of capacity.

On this basis, Aviva did the right thing to take her expressions seriously and to safeguard her IB in response. As it has explained, at the time, no third-party was on record as having authorised access to the IB, so for all intents and purposes it was solely 'her' IB, and the increased level of protection and safeguarding would have been applied in this context and in response to what she had told Aviva.

As X rightly says, the circumstances were different in 2023. His instruction to Aviva rested wholly on the LPA. By his actions, Aviva would've known that Mrs W probably lacked capacity at the time – otherwise, instructions would have come directly from her. The LPA's details would have informed Aviva that it was registered in July 2020, so the implication would have been that her lack of capacity *possibly* started around that time.

However, it is also the case that an LPA can be registered even when there are no existing lack of capacity issues related to the donor, but instead it is registered with foresight towards future possibility or probability that such issues arise. In other words, from Aviva's perspective in 2023 it was not automatically clear that Mrs W lacked capacity in July 2020 (or during the October 2020 telephone call) simply because the LPA was registered in July 2020. At best, and as I said in the paragraph above, the LPA indicated (to Aviva) that her lack of capacity *possibly* started around that time.

This means, in 2023, Aviva could not have reasonably disregarded the concerns conveyed by Mrs W in 2020, which were subjected to a special investigation and which concluded with assurances to her that additional protection and safeguarding would be applied to her IB going forward. X was part of the concerns she conveyed. That meant his instructions in 2023, especially for a *withdrawal* from the IB, would inevitably lead Aviva to revisit, to an extent, those 2020 assurances.

It might have been helpful to X if he was informed, at the outset, the reasoning (and history) behind the additional requests and requirements that were being put to him. The impact of his experience might have been different. With such awareness, his approach might also have been different, and if that meant he front loaded his approach with submissions and evidence addressing Aviva's safeguarding concerns, Aviva's handling of his instructions

might also have been different.

Having said the above, I remain mindful that Aviva's responsibility was the safeguarding of the IB, so it probably considered that it was not obliged to convince X about the legitimacy of that responsibility through an explanation of, or discussion over, the reasoning and history behind its approach. If, as it appears and in this context, it concentrated only on applying the additional checks to the withdrawal requests, and nothing else, I am not persuaded that it did anything wrong. Eventually, in response to X's and the FA's complaints and dissatisfaction in the matter, and having concluded its additional checks (and the IB's surrender), it shared the relevant reasoning and history with X.

I do not consider it necessary to go into the details of the additional checks applied to X' 2023 instructions. Both sides broadly share common ground on these details, and Aviva does not appear to dispute that they were more than normal, because of the safeguarding concerns.

The nature of the instructions appear to have added cause for Aviva to maintain its position in the matter.

X appears to have been finding a way to address objectives related to care home costs and then related to the IHT mitigation opportunity, and I have seen nothing to call into question his motives, efforts or the objectives.

However, as it has described to us, from Aviva's perspective (and in the context of the 2020 concerns, investigation and assurances) it was faced with the following – an explanation from X on 3 July 2023 that the £75,000 withdrawal instruction was for the purpose of paying care home fees; an instruction from him, on 7 July, increasing the withdrawal amount to £100,000; notice from him on 14 July terminating the withdrawal request, after it had issued enquiries to him related to the stated objective (paying the care home's fees); notice from him on 18 August saying he intended to surrender the IB in full; then his explanation on 27 August that the full surrender was intended for a new objective – reinvestment in another fund/platform; followed by contact from the FA a few days later, in which he mentioned reinvestment of the IB surrender proceeds in the IHT mitigation related fund.

Aviva says the changing nature of the instructions, the lack of evidence for the care home fees related objective, substitution of that objective with the reinvestment objective and the need for some information on how the full surrender and reinvestment was in Mrs W's best interest – all viewed in the context of the 2020 concerns, investigation and assurance – gave it reason to sustain the level of additional checks it applied to the matter.

Overall and on balance, I agree. The context is key in this issue. Clearly Aviva was eventually satisfied with X's full surrender instruction, in order to process and complete the IB's surrender on 19 October 2023. As I said above, there is nothing that calls into question X's position in the matter. However, seemingly unknown to X at the time and in the context from which Aviva was operating at the time, the events summarised above did more to affirm the need for the approach it was taking than they did the opposite. For the same reason, I am not persuaded it was wrong in maintaining that approach.

Aviva has apologised sincerely, I consider, to X (and to the FA), for how the process made them feel. I empathise with X on the same basis. However, for the reasons addressed above, I do not consider that Aviva was wrong in applying the additional checks and the overall process that it applied to X's instructions. I do not uphold the complaint.

It follows from the above, that there are no grounds to consider redress for financial loss. I cannot reasonably make a finding on redress where I have not upheld the complaint and I

have not found against Aviva. I understand the claim for redress. However, as an observation only, I agree with the investigator's view that there does not appear to have been an actual loss.

The FA has explained how the intended plan, with the associated receipt of funds deadline of 13 October 2023, was to reinvest through a rights issue arising from Mrs W's previous investment in the relevant fund; this meant she would be exercising the right to buy additional shares in the fund that would be added to her existing holding; and as that existing holding was more than two years old and had already qualified for its IHT mitigation purpose, the additional investment would automatically and immediately qualify for that purpose too.

The surrendered capital appears to have been reinvested in a new fund under the same IHT mitigation scheme, so the two years waiting period applied afresh. The claim appears to be that the inability to reinvest as originally planned has deprived the estate of around £49,000's worth of protection from IHT that it could have had in 2023.

The investigator's point, as I have read it, was that Mrs W was still alive, the IB was surrendered in 2023 and the reinvestment for IHT mitigation was still made in 2023 (two years ago), so it could still qualify for protection from IHT, therefore no loss is presently established.

My final decision

For the above reasons, I do not uphold the complaint from X and Mrs W.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mrs W to accept or reject my decision before 28 November 2025.

Roy Kuku
Ombudsman