

## The complaint

Mr C complains that the value of the pension he'd asked Aviva Life & Pensions UK Limited (Aviva) to transfer continued to rise during the transfer process, but the amount transferred was based on an earlier date, so he didn't get the benefit of the increase in fund value. He said he was able to track this increase on his online portal until the day before the transfer – so he assumed the plan was still active and accessible. He thinks it's unfair for Aviva to benefit from this increase in investment growth and wants the money paid to him.

## What happened

Mr C had been part of a group personal pension plan with Aviva since November 2013. He was due to receive his benefits from age 60 – so November 2023.

In September 2023 Mr C asked Aviva to start the process of transferring his pension benefits to another provider. The transfer was set up on the electronic transfer request system (Origo) on the 12 September and completed five working days later on 19 September 2023 with a transfer value of £401,580.30.

Mr C says he was still able to view his plan details on his "MyAviva" portal and noted that its value just prior to the transfer was £409,562.40.

So he complained to Aviva. He said that, because he still had access to his investment through the online portal, he assumed it was still active. And because Aviva hadn't made him aware of the date on which it sold the funds, he thought he should be entitled to the difference between the value he noted the plan to be on 17 September 2023 and the transfer value that was paid. In any case he didn't think it was fair that Aviva should benefit from the increase.

Aviva said that when a pension transfer is requested it uses an "effective date" to settle the transfer value. This is the date it receives all outstanding requirements so it can then process the transfer without any delays. It said this is its process for all such transfers. So it thought it had acted fairly in using the transfer value it had. It said that the system Mr C had been able to track his investments through reflected what was happening with those investments had Mr C remained invested and not asked to transfer.

Aviva said it wouldn't pay Mr C the difference between the value of his investments prior to the transfer and the transfer value it had used, but did accept that it could have been clearer in explaining the information on the online portal and had potentially raised Mr C's expectations of what he might receive. It offered him £150 for the distress and inconvenience caused.

Mr C wasn't happy with that outcome, so he brought his complaint to us where one of our investigators looked into the matter. He said the complaint should be upheld because he thought Aviva should have removed the funds from the market while the transfer was being completed – and it was unfair for it to benefit from the increase in the value of funds – especially as Mr C was able to see that increase because he had online access to his pension account during that time. He thought Aviva should pay Mr C the difference in fund

values between 12 and 17 September 2023 as well as the £150 for the distress and inconvenience caused.

Aviva didn't accept the outcome. It said:

- The investigator had confirmed in his assessment that it had acted within its terms and conditions, used an effective date for the transfer as was standard across the industry, and had acted fairly and reasonably when processing Mr C's transfer.
- The online system showed the plan as "live" because, unlike when assets are sold and held in cash, the insured funds Mr C was invested in don't have a cash fund option and therefore only show as being encashed when the transfer is processed.
- The unit price of the funds is then back dated, in line with its terms and conditions, to reflect the price on the "effective date." Sometimes the unit price will be higher and on other occasions it will be lower, but Aviva doesn't profit or lose because of this process as such gains or losses are absorbed by the fund and is only likely to affect the unit price at the next valuation point. This will affect remaining members with units in that fund - albeit the fund size means that effect is immaterial.
- It provided extracts from its terms and conditions and principles and practices document to support its use of an effective date.
- But it accepted that it could have provided a warning within Mr C's online portal to explain that while he could view his funds the actual transfer value had been set using an effective date. So it accepted that it should pay £150 for raising of Mr C's expectations and would look to rectify the position with the online portal to try to prevent the situation happening in the future.
- However, Mr C simply wasn't entitled to the investment growth between the two dates because he had requested a transfer and Aviva had calculated the transfer value on an effective date – as it said it would.

Aviva asked from the complaint to be referred to an ombudsman – so it was passed to me to review.

### **My provisional decision**

I issued a provisional decision on 12 August 2024 here's what I said:

#### *"The use of the effective date*

*Aviva says it uses an effective date in these types of transfers to ensure that consumers have certainty of the value they'll receive when requesting a transfer – and to avoid any significant changes in that value caused by market forces during the administrative process of completing a transfer. Aviva also says that this is standard process within the industry amongst providers.*

*Aviva is free to make these kinds of commercial decisions when deciding how to operate its business as long as they are communicated to consumers from the outset and its position is understood.*

*So in the first instance I've looked at what information Aviva did provide Mr C to make him aware that it would use an "effective date" in this way. I began by looking at the original terms and conditions that were provided alongside Mr C's policy. These explained what would happen if a plan was transferred to a different provider and how the units of the funds would be cancelled.*

*“The cancellation of units takes place using the unit price that we:*

- i- next make available depending on the time the request (together with all our reasonable requirements) is received by us, but we reserve the right to use a later unit price if the use of the next available unit price would allow you or somebody acting on your behalf to use already known market data to your benefit; or*
- ii- next make available on the day you specify if this day is later than the day above; or*
- iii- next make available on the day on which a cancellation is necessary under the terms of this policy.*

#### *Transferring your funds*

*Where permitted in accordance with the terms of the rules you can transfer your rights to another scheme. We will cancel all the units from the agreed arrangements and transfer the cash value to the other scheme.*

*We may delay the cancellation of units for the reasons stated in the 'Cancellation of units' section above.*

*We will not make any payment until all our reasonable requirements are met. Please look at the 'Cancellation of units' section for details of when units will be cancelled.”*

*So I think this was clear in confirming that Aviva’s usual process was to begin the transfer process and cancel the funds at the next available opportunity (within its rules) after all “reasonable requirements” had been met. There’s no dispute here that when it created the second Origo transfer request on 12 September 2023 all requirements had been met and it was able to progress the transfer and complete the administrative process. This would therefore be the effective date in Mr C’s case.*

*This was also supported by the key features document which, under the heading “can I transfer my pension to another pension provider? stated, “if you choose a cash transfer, your money won’t be invested for a period of time. This means it won’t benefit from any rise in the value of investments but there will be no detriment from a fall either, during that time. Alternatively, you can ask to make a unit transfer of funds or exchange traded investments.*

*I think this confirmed that once a value had been ascertained on the effective date that value would be fixed, and any investment growth or loss wouldn’t be added to or taken away from the final fund value. And in a separate terms and conditions booklet relating to the pension it was stated that:*

#### *“Transferring your funds*

*Where permitted in accordance with the terms of the rules you can transfer your rights to another scheme. If you decide to do this we will cancel all the units allocated to the arrangements within your plan and pay the money, after making any allocation adjustment to the other scheme. The cancellation of units will be at the bid price at the next valuation point after we have received everything needed to complete the transfer.”*

*So I think that supported the idea that once Aviva had received all the documents and permissions to proceed with the transfer it would then cancel the units in the fund and then process the transfer as normal within its service standards. In Mr C’s case Aviva completed the transfer within five working days which I think was timely and didn’t incur any unnecessary delays.*

*So I think Aviva was entitled to use an “effective date” when it calculated the transfer date and made Mr C aware that it was going to do this in the event of him requesting a transfer of his plan elsewhere.*

*But Mr C said Aviva didn’t tell him what this effective date of settlement was and as he could still view his plan online – which was increasing in value – he assumed it was still “live” and that he would receive the higher value. I’ve thought carefully about this point and whether Aviva needed to make it clear what the settlement date would be. But I don’t think it was obliged to. I say that because firstly Aviva wouldn’t have known that date until it received the outstanding requirements which meant it could only have told Mr C after the event. And I think that Aviva did enough through the documents it had provided or made available to Mr C from when the plan started to make it clear the date would be set when reasonable outstanding requirements had been met.*

*However I also need to consider the impact on Mr C of him being able to view and access his plan details through the online portal.*

#### *The online portal*

*Mr C says that as he could see the value of his plan increasing, he assumed it was still being managed and that therefore he should have received that final value the day before the transfer completed – especially as he hadn’t been told what the settlement date had been at that time.*

*Aviva has provided a technical explanation which, in summary, said that as Mr C’s plan held insured funds these weren’t sold to cash and therefore it was more of question of cancelling the units in the fund and applying the unit price that existed on the settlement date. It further explained that it doesn’t benefit from any increase or decrease in the value of the plan as this is simply reflected in the new unit price within the fund and would therefore only affect existing holders of units within that fund.*

*It’s unfortunate that Mr C was able to continue to see the value of his fund – and that it was increasing in value. But I ought first to say that I don’t think this should mean that Mr C is entitled to that financial gain. Mr C had requested a transfer and Aviva made it clear when it would calculate the transfer value from – so it wouldn’t be fair to award a refund to Mr C on that basis. By the same measure I wouldn’t expect Mr C to have to repay any reduction in the fund value had that occurred instead.*

*I imagine Mr C might say that it also isn’t fair for Aviva to benefit from a fortuitous gain for the same reason. But any gain (or any loss by the same virtue) is absorbed by the fund as would be the case with any cancellation of units from this type of investment. And this consequence is as a result of Aviva’s commercial decision to use an “effective date” to settle transfer values. Its fund could equally suffer a financial loss because of its procedures.*

*However, Aviva has accepted that a marker on the online portal to explain that any values shown might not reflect the actual transfer value may have helped to manage Mr C’s expectations. Of course this is of no consolation to Mr C now and I can fully understand why the ability to see his investment increasing in value would have raised his expectations of what he would receive as a transfer value.*

*So I think this did impact Mr C to some degree and I understand why he thinks that Aviva simply shouldn’t benefit from this situation. But taken overall I think the offer of £150 is fair and reasonable for the raising of his expectations and, while I don’t think Aviva should refund him the difference in fund values, I think Aviva should pay £150 – as it’s within the range of what I’d expect to see for the kind of impact this had on Mr C.*

## Responses to the provisional decision

Aviva accepted the provisional decision and said it had nothing further to add. But Mr C didn't agree. He said he still didn't understand how the growth on his individual pension plan could remain within Aviva's fund. He also thought the compensation Aviva had offered – which I said was fair and reasonable – was inadequate. He thought the time and effort taken discussing this matter with Aviva and chasing it for updates and information – including his subsequent complaint, warranted further payment. He said the matter had caused him significant stress and frustration and would like me to review the amount involved.

## 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 considered Mr C's further points and response, I see no reason to depart from my provisional findings. So, I'll set out my final reasons below.

Mr C asked Aviva to transfer his pension benefits to a new provider in September 2023. The transfer completed in five working days – so I don't think there were any delays and I think the process was completed in a timely manner. But Mr C says that his plan's 'actual' value increased significantly during the transfer process and – as he was still able to access the online portal which showed the value of his plan – he assumed it was still active and being managed. So he believes he should have received the value of the plan just before the transfer completed.

But Aviva says it effectively settled the claim when all the outstanding requirements had been met and used that "effective" date to fix the transfer value that would be used.

So in the first instance I've looked at whether it was fair for Aviva to do that.

### The effective date

The original terms and conditions of Mr C's plan stated that when Aviva transferred funds it would "*cancel all the units allocated to the arrangements within your plan and pay the money, after making any allocation adjustment to the other scheme. The cancellation of units will be at the bid price at the next valuation point after we have received everything needed to complete the transfer.*" In this case all the requirements had been met when Aviva created the transfer request on 12 September 2023, so in accordance with its rules it needed to cancel the units at the next available point. This would seem to be a clear process and in line with what Aviva did when it set the effective date for calculating the transfer value of Mr C's plan.

But Mr C says he could monitor his investment on the online portal and, as the value continued to increase, he assumed he would receive the higher value. So I looked at the key features document for Mr C's plan which explained what would happen during the transfer process. It said that "*if you choose a cash transfer, your money won't be invested for a period of time. This means it won't benefit from any rise in the value of investments but there will be no detriment from a fall either, during that time.*"

*Alternatively, you can ask to make a unit transfer of funds or exchange traded investments."*

I think this confirmed that once Aviva had calculated the transfer value on the effective date Mr C's plan would no longer benefit from any further investment growth or suffer any investment loss from that point.

I can understand why Mr C might think that to be unfair in his case especially as he says Aviva didn't specify what the effective date was. I've thought about whether there was a lack of clarity here, but I think Aviva's documentation that was available when Mr C took out the plan made it sufficiently clear that a date would be set when the outstanding requirements were met. However Mr C says he still cannot understand why Aviva should be able to benefit from the investment growth, through the overall fund value, in this situation. So I've considered this aspect of Mr C's complaint along with the fact that he was able to continue to view and monitor his investment through the online portal even after the transfer value had been set.

### The online portal

Aviva has accepted that it may have raised Mr C's expectations of the transfer value by not including some kind of warning or marker on the portal that explained any changes in the plan's value wouldn't be reflected in the transfer value. I'll address the question of the impact on Mr C and Aviva's offer of compensation later in the decision.

But Aviva also explained that because the funds involved here were insured funds – which unlike normal unit linked funds couldn't be sold to cash – it could only reflect the transfer value that had been previously calculated once the transfer had completed. It's not ideal that Mr C could see what he thought was an increase in the value of his plan on the portal but, and I accept some more information could have been provided to explain this, this didn't represent the transfer value that had already been calculated using the earlier effective date.

And to the question of who should benefit from this increase, I can't say it would be fair to pay this investment growth to Mr C as he had already requested his transfer and the value had been calculated in line with how Aviva said it would through its terms and conditions. I know Mr C doesn't think it's fair that Aviva should benefit either, but Aviva has set out how it calculates a transfer value in these situations – which is a commercial decision its entitled to make, so I think any investment "gains" or by the same measure any investment losses are simply a consequence of these commercial decisions. Aviva could equally have paid Mr C a higher transfer value than the actual final value of the plan and he wouldn't have been liable to repay those losses.

I'm also mindful of how these gains or losses are simply reflected in the new unit price of the fund following any cancellation of units within it. So it's the existing investors in the fund that would experience any subsequent "ups and downs" in the value.

So I don't think it would be fair for Mr C to receive the subsequent investment growth as that would put him in a better position than he ought to be having requested a transfer of his plan and been given the transfer value that he ought to have received according to the plan's terms and conditions. And I think it's Aviva commercial decision to settle transfers using an "effective date," which I understand is normal practice in the industry – which led to the situation that occurred here. I think it set out those terms and conditions clearly in the literature that was available to Mr C when he took out the plan.

As I said previously Aviva offered Mr C £150 for the raising of his expectations around the transfer value because of his continued access to what he believed was a "live" position of his plan. I think, and I've seen how strongly Mr C feels about this, that he was impacted to some degree in his expectation of what he should receive. I'm also mindful of Mr C's position that he had to spend time engaging with Aviva to understand what had happened and in his subsequent complaint.

But any awards that I might recommend aren't meant to punish Aviva for its actions but to reflect what might be appropriate for the impact the matter had on Mr C. In this case I think that £150 is fair and reasonable and within the range of compensation I would have recommended for this level of impact.

### **My final decision**

Aviva Life & Pensions UK Limited has already made an offer to pay £150 to settle the complaint and I think this offer is fair in all the circumstances.

So my decision is that Aviva Life & Pensions UK Limited should pay £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 October 2024.

Keith Lawrence  
**Ombudsman**