

## The complaint

Dr B has complained about the service provided by is unhappy with the service provided by Aviva Life & Pensions UK limited (Aviva) when he wanted to encash his pension benefits as a lump sum.

He believes that Aviva caused a delay to the process, resulting in a financial loss.

He would like Aviva to compensate him for any financial loss he has suffered, as well as paying the legal fees he incurred by engaging a solicitor to help him take his pension benefits.

Dr B is being assisted in his complaint by his solicitor. For the purposes of simplicity, I shall refer to all communication as if it were with Dr B.

## What happened

I issued my provisional decision in August 2024, the relevant parts of which are reproduced below and forms part of my decision:

*Dr B was resident of an EU country, but held a UK held a personal pension plan administered by Aviva from time he had spent in the UK.*

*In mid-October 2022 Dr B first contacted Aviva via email to request information about his pension policy benefits, as well as asking what information Aviva would require to enable his lawyer to represent him in the process. Receiving no reply, Dr B called Aviva on 3 November 2022 called Aviva to repeat the questions. Aviva advised that him that he must provide a Power of Attorney form (POA) naming his lawyer as being authorised act on his behalf. This POA was sent to Aviva on 15 November 2022. Having received no reply by 21 December 2022, Dr B called Aviva once more. Aviva asked him to provide further information, including his proof of address and asked for a copy of supporting documentation. Dr B sent Aviva a copy of his driving licence and Hungarian ID card on 13 January 2023.*

*Aviva responded on 18th January stating that if Dr B wanted to change his overseas address he had to send certified copies of the same documentation.*

*Dr B called Aviva on 2 February 2023 before sending it certified copies of his passport, driving licence, address card and 3 utility bills. He called Aviva again on 28 February and 2 March 2023 to check that the documentation had been received and it met Aviva's requirements.*

*He subsequently resent the documents again before calling again on 29 March 2023 to confirm again that the documentation had been received, considered and processed. Aviva subsequently approved the POA and sent Dr B the information about his pension fund.*

*Dr B emailed Aviva on 4th April requesting the transfer of his pension policy to his nominated account. Aviva responded on 5 April 2023 to state that it would respond by 28 April 2023.*

*On 4 May 2023, Aviva issued a retirement pack to Dr B, which contained details of the options available to him for taking his benefits as well as a form of authority for overseas payments.*

*On 26 May, Dr B contacted Aviva to ask about the tax implications of taking his benefits as a lump sum. Aviva responded to his email on 1 June to ask him to call the retirement specialist whose number it had provided on the retirement options pack.*

*Dr B called the specialist on 6 June and subsequently chose to withdraw his benefits as a cash lump sum and returned the completed forms to Aviva on 13 June 2023.*

*On 15 June 2023 Aviva wrote to Dr B explaining that it needed further information from him before it could process the payment he had requested.*

*It asked for a copy of a valid photographic driving licence or valid passport as well as a copy of a bank statement in the name of Dr B showing the details of the account he wished the money to be paid into.*

*Aviva wrote again to Dr B on 30 June 2023 as it had not yet received the outstanding documents.*

*Dr B replied on 4 July 2023 to explain why he did not have a UK national insurance number (NINO), but he did not send the bank statement or valid identification documents until 20 July 2023.*

*Dr B called for an update on 20 July 2023 and Aviva raised with an internal team about Dr B's lack of a NINO.*

*Dr B provided further documentation on 3 August 2023 which included a driver's license, passport, and government identification card showing proof of address.*

*Aviva required the photographic identification documents and the bank statement to be certified, as Dr B was resident overseas and did not have a NINO. This information, however, was not communicated to him until 9 November 2023.*

*In the meantime, Dr B had raised a complaint about the delay Aviva had caused in him being able to take his retirement benefits.*

*The certified documents were subsequently received by Aviva on 16 November 2023.*

*Aviva also responded to Mr B's complaint on 16 November. It acknowledge that it had caused a delay and that Dr B had received poor service. It offered him £50 in respect of the distress and inconvenience it had caused him.*

*Due to the time passed the quote provided in the retirement pack from 4 May 2023 had expired, and a new quotation document had to be prepared.*

*Dr B contacted Aviva on 14 December 2023 as he had not received the new quotation, and Aviva responded by emailing the documents to him the same day.*

*Dr B was unhappy with the response to his complaint and complained again to Aviva on 15 December 2023. This quotation was for a lower amount than Dr B had been quoted on 4 May 2023.*

*Aviva then requested a further bank statement from Dr B on 21 December 2023, and 29 December 2023.*

*Dr B once again contacted Aviva on 15 January 2024 because he felt that he had already provided this on 16 November. Aviva subsequently confirmed on 19 January 2024 that payment should proceed, and on 24 January 2024 it contacted Dr B again to confirm which of the two bank accounts that had been provided he wanted his pension benefits to be paid to. Dr B provided this confirmation on 29 January 2024 and the payment made to Dr B on 7 February 2024.*

*Aviva responded to Dr B's complaint on 8 February. It upheld his complaint that it had caused delay and confirmed that it had backdated the payment to 8 August 2023, to take into account the delays it accepted it was responsible for. It also paid interest at 8% simple per annum from 8 August 2023 to 7 February 2024 to compensate Dr B for paying him later than it should have. It also offered Dr B a further £200 in respect of the distress and inconvenience it's errors had caused.*

*Dr B remained unhappy with this response and brought his complaint to this service. He believed that Aviva should compensate him for the legal fees he had incurred and A further final response was issued by Aviva on 8 February 2024 whereby £200.00 compensation was offered for the upset and inconvenience caused.*

*Dr B still wanted to pursue the complaint with our service - in particular, he wanted reimbursement of the legal fees, the payment backdated until 13 June 2023 and also felt the £250 compensation he had been offered was inadequate.*

*Our investigator reviewed the information provided by both parties and formed the view that Dr B's complaint should be upheld, but that the date Aviva should have paid Dr B from was 8 August 2023 and that only the payment for distress and inconvenience should be increased, to a total of £450.*

*Dr B was unhappy with this view, and so the complaint has been passed to me to make a final decision.*

Dr B replied to my provisional decision to reiterate his view that the date from which the period of delay should be calculated should be 13 June 2023, rather than 8 July 2023. He accepted that the figure of £750 in respect of distress and inconvenience was appropriate, but asked again for compensation in respect for at least a proportion of the legal fees he had incurred. He explained that he had a limited command of the English language and so felt it necessary to engage professional help to resolve his complaint.

Aviva did not reply my provisional decision, so I will now issue my 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.

In my provisional decision, I stated:

*Having done so, I intend to agree with our Investigator and uphold this complaint. Having said that, I have reached a different conclusion about the compensation that Aviva should offer to Dr B as a result of these delays.*

*As I have reached a different conclusion on this aspect to our Investigator, I think it only fair to give both parties time to consider and reply to this provisional decision before issuing my final decision.*

*I appreciate that this will be disappointing to Dr B, so I will explain now how I have reached my decision.*

*Firstly, I think it's important to reflect upon the role of this service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly. It is fair to say that Aviva has agreed with the merits of Dr B's complaint, that it caused undue delay to his pension transfer.*

*Consequently, the main issue I need to decide upon is whether the compensation Aviva has offered Dr B is appropriate in the circumstances. This means that I need to establish whether I agree that the date Aviva believes it should base Dr B's financial loss upon – 8 August 2023 – is the right date, or whether an earlier date is justified. I have to consider, as our Investigator did, the regulatory and security aspects of the transfer particularly as this is a transfer of benefits to an overseas bank account.*

*To do this, I will review the earliest date that I think all Aviva's information requirements should have been met, allowing it to process the transfer.*

*Aviva has produced a hypothetical timeline which starts on 3 May 2023, when Dr B called to request an illustration. This shows how long each stage of the process should have taken if no delays had occurred in the process and concludes that 8 August 2023 is the date when all its requirements had been met to allow the transfer to proceed. I've carefully considered this hypothetical timeline in comparison to what actually happened and agree that on this basis, 8 August 2023 is a realistic date to use.*

*I have, however, also considered that prior to 3 May 2023, Aviva had requested information to allow it to establish and validate Dr B's identity and that his lawyer had the authority to act on his behalf. It told him that it required a completed Power of Attorney (POA) application form, together with certified copies of Dr B's passport, driving licence, address card and 3 utility bills. These were sent to Aviva on 14 February 2023. Having received this information, I can see that it took Aviva until around 29 March 2023 - and several chasing phone calls from Dr B – to accept the POA. I would have thought that a period of ten working days would have been more appropriate, so I consider, on balance that Aviva caused a delay of 21 working days here.*

*Dr B has, at all times, shown a willingness to provide information and contact Aviva proactively to try and progress the transfer as quickly as possible. Consequently, I consider that if Aviva had processed the POA in a timely way, Dr B would have asked for the transfer to start after the same amount of time after the POA was accepted by Aviva.*

*Given this, I consider that the date the transfer process should have started should be 8 July 2023, rather than 8 August and this is the date that should be used for the loss calculation.*

*This is also the date that Aviva should use when calculating the interest it should pay Dr B for depriving him of his funds from 8 July 2023 until 7 February 2024. It should pay him interest at the rate of 8% per annum simple for this period on the total funds it should have transferred to him.*

*I've also considered Dr B's request that Aviva should compensate him for the higher than expected legal fees he incurred as his solicitor had to spend a longer than expected amount of time to act on his behalf during this process. While I can see why Dr B may feel this to be appropriate, I cannot agree with him. As our Investigator mentioned in their view, many of*

*the legal fees stem not from issues arising directly from Aviva's errors and would always have had to be incurred once Dr B decided to use a lawyer to act on his behalf in respect of this transfer. I also agree that the process of engaging with this Service is designed to be accessible to all consumers without recourse to paid legal representatives. Aviva has made similar comments relating to its own process in its response to Dr B's complaints and so I do not feel that it would be appropriate to ask it to bear the cost of Dr B's representative.*

*In terms of the payment for the distress and inconvenience Dr B suffered due to Aviva's errors and delays, I have considered the cumulative effect of Aviva's lack of proactivity and the length of time the process took. In all, the process took over a year when it should have been much quicker and easier for Dr B. I've also considered the guidelines our Service has published to ensure compensatory awards are appropriate and consistent and have concluded that Aviva should pay Dr B a total of £750 in respect of his distress and inconvenience.*

I have considered the points Dr B raised in his response to my provisional decision. Taking each in turn;

Although I can appreciate that Dr B feels that the compensation should be based upon a date of 13 June, as he feels that Aviva should have asked for all its information requirements sooner in the process, I cannot agree on this point. Aviva has provided information to support its view that some of these requirements were not known from the outset and became apparent only once it became aware that Dr B did not have a NINO.

While I can appreciate Dr B's view that the protracted duration and complexity of his complaint and his limited command of English contributed to his decision to seek legal assistance in resolving it, I cannot agree that Aviva should bear the costs of him doing so.

The Dispute Resolution (DISP) rules in the FCA Handbook give clear guidance to this service about how it should investigate unresolved complaints that are referred to it. In this situation, I consider that DISP 3.7.10 G applies. This states:

*In most cases complainants should not need to have professional advisers to bring complaints to the Financial Ombudsman Service, so awards of costs are unlikely to be common.*

As I mentioned in my provisional decision, the process of bringing a complaint to this service is designed in such a way as to make it accessible without professional assistance. For example, interpreters and communications in a number of other languages – including that of the country Dr B resides in - are offered by this Service on request. Aviva also made representation that its complaints process is designed to be accessible without professional assistance. Although it is unclear whether Aviva offers translation or foreign language documents, I can't see that Dr B ever asked if this was available or explained that he was not fluent in English. I've also considered that Dr B retained the service of this legal representative to act on his behalf in managing the transfer of his pension benefits, prior to him realising that he had cause to complain. Taking all these factors into account, my decision remains that Aviva is not responsible for the legal costs Dr B incurred.

## **Putting things right**

To compensate Dr B appropriately Aviva should:

- Re run its financial loss calculation using the starting date of 8 July 2023, rather than 8 August 2023.
- Pay Dr B simple interest at the rate of 8% per annum from 8 July 2023 to 7 February 2024 on the fund value as at 8 July 2023.

- Pay Dr B the total of £750 in respect of the distress and inconvenience he has suffered.
- Provide details of the calculations to Dr B in a simple, easy to understand format.

**My final decision**

For the reasons given above, I uphold Dr B's complaint.

Aviva Life & Pensions UK Limited should pay Dr B the sums calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 28 October 2024.

Bill Catchpole  
**Ombudsman**