

The complaint

Mr H1 and his son Mr H2 complain about the delays caused by Aviva Life & Pensions UK Limited in assigning and withdrawing two bonds between June 2022 and November 2022.

To put things right, they'd like compensation for the loss of value of the bonds caused by the delays.

What happened

Mr H1's late mother (Mrs H) held two Portfolio Step Down Option investments bonds, issued by Norwich Union in September 2006.

I understand that the bonds in question – referred to as 'bond UL' and the 'bond UZ' – had been set up in trust.

Bond UL was held in a bare trust that was created by Mrs H in 1996 with just three beneficiaries, namely Mr H1 and his two siblings.

Bond UZ was held in a discretionary trust created by Mr H1's father in 1994 allowing for other family members including grandchildren to be nominated as beneficiaries at the discretion of the trustees.

I note that since the death of his father in 2017, Mr H1 and Mrs H were the sole trustees. I also note that the trusts were registered with HMRC's Trust Registration Service.

For reasons that aren't material, a decision was taken to assign the relevant bonds to various beneficiaries (family members) with a view that they'd be liquidated in due course.

The process began in July 2022, with clarification and guidance sought by Mr H1 from Aviva regarding the relevant forms and documentation needed to complete this process. At the time bond UZ was valued at £71,028 and bond UL at £122,821.

Despite his very best efforts, Mr H1 wasn't always able to get through to Aviva regarding queries he had regarding its forms. He utilised various mediums (including email and letter) and various departments but wasn't given consistent information.

Although Mr H1 submitted the applications – on 22 September 2022 for bond UZ, and 29 September 2022 for bond UL (for withdrawal forms weren't initially included) – the relevant application in relation to bond UL was unacceptable because they needed additional information, that Mr H1 says he should've been told about a month earlier.

I understand that Mr H1 complained to Aviva shortly thereafter but still couldn't get anywhere with regards to the answers that he needed. And since the assignment – from which point the bonds were no longer in trust – Mr H1 was still told that he was missing information. It was some time later he was told that Aviva would 'provisionally' accept the relevant bond, but according to Mr H1 it could've done so sooner.

Aviva upheld the complaint. In its latest Final Response Letter (FRL) dated January 2023 it accepted that it made a number of errors resulting ultimately in the delayed payment of the funds. It paid £750 compensation for the distress and inconvenience caused – increased by £500 from its initial offer – which Mr H1 says he reluctantly accepted.

However, still unhappy that Aviva refused to accept liability for any financial loss (namely the loss of value of the bonds) resulting from the delays Mr H1 (and Mr H2) referred the complaint to us.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- Our service doesn't have jurisdiction to consider 'complaint handling'.
- Aviva didn't allow access to its 'MyAviva' online portal because the bonds in question were held in trust and/or there were segmented policies – Aviva didn't have the means to separate the information available therefore couldn't just allow Mr H1 to have access to all this information.
- There's also nothing within the terms and conditions that gives an absolute right to online access. Which is why Aviva was allowed to resort to traditional means of communication.
- In the circumstances, our service can't tell the business which corporate decisions it should be making. It has its own set of processes and procedure in place that it needs to abide by.
- The original trust forms weren't Aviva forms – it didn't have the forms – therefore there was no obligation to provide (suitable) different documents to amend the trust.
- On 15 July 2022, Mr H1 was advised that he needed to provide the original trusts, deeds of appointment and surrender forms along with tax residency forms. Such requirements were a standard industry practice - although it was up to the individual business how it met its obligations and it's not for us to tell a business how it should do this.
- Aviva wasn't wrong to ask for additional information because that's what it needed. He can't say that it's done anything wrong in doing so.
- Aviva wouldn't have required the trust at the time of setting up the policy as the requirements have changed over time.
- Having reviewed the entire timeline, he's able to identify a possible delay.
- For bond UL, the deeds were received on 30 September 2022. The request for the deeds to be altered was on 1 November 2022. Aviva has taken responsibility for the entirety of this delay.
- On 11 October 2022 (when the bond should've been encashed) the value was £119,604.83 compared to 12 November 2022 (when it was encashed) the value was £120,993.70. So, the delay has resulted in a gain of £1,328.87.
- Even allowing for interest at a rate of 8% simple, which would be just under £800, this still leads to a net gain in excess of £500.
- Whilst this happened by default rather than design, he can't award compensation for financial losses that haven't occurred.

Mr H1 disagreed with the investigator's view and asked for an ombudsman's decision. In summary he said that the view failed to address any of the main points of his complaints about Aviva's exceptionally poor customer service and the financial consequence of the delays, for which it's largely responsible. He's unhappy that the investigator – the third investigator to work on his case – didn't call him before he issued his view.

As no agreement has been reached the matter has been passed to me for review.

In mid-December 2023, I issued my provisional decision, a copy of which is stated below and forms part of my final decision. In the decision I said:

“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, subject to any further submissions, provisionally I’m going to uphold this complaint.

On the face of the evidence, and on balance, despite what Aviva says, I think the assignment and liquidation of the bonds were – more likely than not – delayed in the main as a result of Aviva’s shortcomings in relation to the forms/instructions which it broadly accepts but denies it caused any financial loss.

Put differently, but for the issues, I think it’s more likely than not that Mr H1 and Mr H2 would’ve had access to the encashed funds, for bond UZ and bond UL sooner – respectively around three and six weeks sooner, than they did.

So, to put things right Aviva should compare the value of the bonds when they were surrendered, with what the value would’ve been had they been surrendered three weeks earlier (for bond UZ) and six weeks earlier (for bond UL). If there’s a difference, Avia should pay the loss with 8% simple interest from the date of payment to the date of settlement, less any interest payment already made.

I’ve chosen three and six weeks as an estimated timeframe that I think – notwithstanding the unavoidable challenges – is a reasonable period by which things would’ve moved quicker had there not been errors and confusions on the part of Aviva. I understand that this figure isn’t an exact science, but it broadly reflects the delays that I think Aviva ought to take note of.

I should make clear at the outset that ‘complaint handling’ and ‘customer service’ are not regulated activities under the DISP rules, therefore they’re not points that I can consider a complaint about save where they are ancillary to a regulated activity. This might explain why the investigator didn’t address in any great detail what Mr H1 refers to as his main points about the “exceptionally poor customer service”.

Although the investigator did touch upon other issues, I think on balance these have either been covered or are immaterial given the narrow basis upon which this complaint was referred to me for a decision.

Even if I was able to consider a complaint about customer service in this case, on the basis that customer service was ancillary to a regulated activity, I understand that this part of the complaint has already been dealt with by Aviva and Mr H1 has received a payment of £750 for the distress and inconvenience caused, which he has accepted.

In this instance, and on balance, I don’t think I need to revisit this area. Even if I was to do so, I think the compensation already paid and accepted – given the issues experienced, and the delays – is broadly fair and reasonable.

I note that the complaint was referred to us on the basis that these delays resulted in financial loss – namely loss of value of the bonds – which Aviva doesn’t accept because it says Mr H1 made a gain in relation to bond UL. I’m aware it doesn’t accept any delays in relation to bond UZ which (on balance) I don’t agree with.

That’s why in this case I’ve only considered the issue of financial loss and what Mr H1 recently referred to as: “the financial consequences of the delays for which they were largely

responsible”.

On the face of the evidence, and on balance, arguably it seems that Aviva accepts that there's a case for (potentially) awarding loss, for bond UL only, however based on a comparison of when the UL bond should've been encashed with when it was encashed (32 days later) Aviva found it has made a gain – rather than a loss – therefore it isn't required to pay any compensation.

Unlike Aviva, I think this position regarding potential financial loss should apply to both bond UZ and bond UL, on the basis of each of the bonds being (respectively) encashed roughly three and six weeks earlier than they were, which I appreciate will have different dates. And I do that, primarily given the basis of Aviva's FRL dated January 2023.

I note Mr H1 says that the loss of value of the two bonds is at least £3,000 based on the value of the bonds when they were eventually surrendered in mid-November 2022 – that being £190,871 - and the value had they been surrendered in September 2022, which he says would've been higher. I think based on my award for redress, Aviva can calculate and work out whether or not there has been a loss to the bonds, if so, by how much.

I understand that the process started in July 2022. I note Mr H1 mentions a similar process – to assign the bonds, transfer ownership (to 11 family members) and for the assignee /beneficiaries to surrender the bonds – involving three other bonds held with LV and Prudential, ran smoothly.

I note it was only in relation to the two Aviva bonds that Mr H1 encountered countless obstacles (much of which Aviva accepts) which is why I think my proposed redress methodology is fair. I appreciate Aviva has its own processes and procedures in place in order to successfully assign and encash bonds which I don't have an issue with. It is the manner in which it dealt with the request leading to the delays, which in turn may have caused Mr H1 and Mr H2 a loss, that I'm considering and think they should be compensated for.

I note Mr H1 says that what took LV and Prudential about six weeks took Aviva four months, until payments were finally made in November. Mr H1 says if the process had run smoothly the assignees would've received their money in September – but I don't agree with Mr H1's calculations.

Despite what Mr H says, I'm not suggesting that Aviva should've completed the process within six weeks, or that it has done anything wrong by not doing so. I'm aware that despite experiencing numerous issues, Aviva couldn't not request the relevant information that it needed to carry out his instructions despite the delays. However, as mentioned above, throughout the process it could've provided clear and accurate information such as to keep the process moving, for example in relation to documents that it can and can't accept. Which is why, on balance, I think the process would've completed three and six weeks sooner than it did, had Aviva done so, rather than Mr H1 having to come back seeking further information and clarification. I anticipate that Aviva (and Mr H1) will probably disagree with my provisional findings, albeit for different reasons, but I think it's fair and reasonable in the circumstances.

Whilst I understand Mr H1's issues regarding the bond value, I should also make clear that the investment performance alone isn't something that our service would consider a complaint about. That's because investment performance isn't something Aviva can predict or control and is largely depended on the financial markets. That said, I'm aware that Mr H1 is concerned about the loss in value of the bonds owing to the delays which is what I've addressed in this provisional decision.

I'm aware that there was an issue with bond UZ when Mr H2 requested a valuation of the 15 segments assigned to him and Aviva gave him an incorrect figure. Had it not been for Mr H1's intervention there was a risk that Aviva might've paid out roughly 7% less than what the bond holders were entitled to. Nevertheless, this didn't happen and there wasn't a financial loss as a result of this incident, therefore I can't award any compensation for losses that didn't occur."

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wished me to consider before I considered my final decision, if appropriate to do so.

There's been much correspondence between Aviva, Mr H1 and myself which I don't need to go into in detail. Below I've set out in summary what each party has said.

Aviva responded but doesn't agree with my provisional decision - it doesn't agree with why I'd specifically chosen three and six weeks as the delay period. Overall, it doesn't accept that it was responsible for any delays, other than in relation to bond UL – for which it did a comparison which it says showed no financial loss was caused by its delay.

Aviva also highlighted that there were 11 owners of the segments across the two bonds, and only Mr H1 and Mr H2 had complained. Mr H1 doesn't have the right to any information beyond the point of assignment (from when the segments belonged to their respective owners), so it can't share any information relating to those investments with him.

Anyhow, despite not agreeing with my provisional decision to uphold the complaint, it said that it would action my redress in respect of the segments of the bonds owned by Mr H1 and Mr H2. If there's a loss it will refund this amount, with interest at the rate requested.

Mr H1 also responded but didn't accept my provisional findings which he thought were inconsistent and confusing, primarily on the basis that I upheld the complaint and concluded that Aviva had paid 'too much' to the bond holders. In short, he's asked me to review my findings.

Mr H1 went on to explain that the delay period was eight to ten weeks and queried whether I'd been apprised of all the facts as he saw them – in particular the fluctuations of the bond values between July 2022 and November 2022 - and whether I'd appreciated Aviva's poor/non-consistent customer service between July and September before he was able to submit the complicated documents for assignment and surrender.

He notes that Aviva admitted that it didn't have a sufficient number of trained staff to handle the assignment and surrender process. And the staff it did have often didn't communicate with each other or Mr H1. The consequences of this under-staffing and incompetent service was a delay in the submission and processing of documents and payment which was eight to ten weeks.

In other words, Aviva couldn't provide Mr H1 with accurate, reliable information to complete the forms and later didn't have the resources to handle a two-stage process competently. Aviva had already admitted many of its failures.

He argued that if I uphold the complaint I must change the redress methodology or revise the proposed adjustment period, because the loss is closer to £3,000.

In a recent response dated 19 September 2024, Mr H1 made the following final submissions:

- Prudential and LV provided a service that ran smoothly, and the bonds were encashed and monies paid to the beneficiaries that were close to the values quoted in July 2022. The process took around 5/6 weeks.
- Aviva confirmed in writing on 7 October 2022 that the assignment was complete then on 31 October 2022 said that the policy hadn't been assigned.
- It then tried to blackmail him when in November 2022 it demanded that he retrospectively and unilaterally amend the trust deeds to cover up its mistakes. He was advised by a lawyer not to do so.
- It took Aviva seven weeks to assign a complaints handler. No one has ever addressed its customer service failings.
- He's encouraged that I'm going to uphold the complaint.
- He'd like me to take account of the delays over the entire five months, both before and after the submission of his signed forms on 27 and 29 September 2022.
- The delays in October and November are small in duration, the longest and most damaging delay was in July and August, when Aviva's customer service resources were thin and incomplete.
- He acknowledges that it's difficult to ascribe responsibility for avoidable delays but he hopes the evidence points to Aviva being largely responsible.
- Its failings in customer service implicitly acknowledges its responsibility in the delay and the consequent loss of 'policy value'.
- Aviva had a duty to employ sufficient trained staff to deal with the request.
- The payments were finally paid to the bond holders on 15 and 23 November but Aviva has never disclosed the settlement dates and when the fund units were sold.
- The final payment to Mrs H (Mr H1's deceased mother) was made two months later, on 10 January 2023.
- The sums should've been paid in early/mid-September and don't include the lost interest.

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, notwithstanding the latest submissions from Mr H1 and Aviva, my decision to uphold this complaint remains the same, principally for the same reasons as set out in my provisional decision.

In other words, despite the parties being given time to respond to my provisional decision, I'm satisfied that no new material points have been made that persuade me I should change my decision.

In this instance, and on balance, I'm still satisfied that the key points remain the same, and have been considered by me, in my provisional decision, so I don't think I need to repeat myself.

On the face of the evidence, and on balance, despite what Aviva says, I think the assignment and liquidation of the bonds were – more likely than not – delayed in the main as a result of Aviva's shortcomings in relation to the forms/instructions which it broadly accepts whilst denying it caused any financial loss.

Put differently, but for the issues, I think it's more likely than not that Mr H1 and Mr H2 would've had access to the encashed funds - for their segments of the respective bonds – respectively around three and six weeks sooner than they did.

So, to put things right Aviva should compare the value of the bonds (those segments belonging to Mr H1 and Mr H2) when they were surrendered, with what the value would've been had they been surrendered three weeks (or 21 days) earlier (for bond UZ) and six weeks (or 42 days) earlier (for bond UL).

If there's a difference, Avia should pay the loss with 8% simple interest from the date of payment to the date of settlement, less any interest payment already made.

For the benefit of doubt, if the value of bonds would've been lower than what Mr H1 and/or Mr H2 received, then there's no compensation to be paid. That said, Mr H1 and Mr H2 should be entitled to keep any gain they made on their respective investments.

- Despite what Aviva says about the delay, I have taken a holistic view of the overall assignment and encashment process. In other words, I've looked at it as one process and in the round.
- Whilst I accept that not all of the issues were down to Aviva, based on what I've said above in my provisional decision – as well as some of the points made by Mr H1 – I don't think around four months to carry out Mr H1's instructions is a reasonable amount of time.
- On balance I think that if Aviva had dealt with Mr H1 better in respect of his instructions and enquiries – by providing clearer information and managing his expectations better – the process would've happened (sooner) in the way that I've indicated.
- Put differently, on balance I estimate that the process would've been completed three and six weeks sooner in respect of the bonds.
- I appreciate Aviva disagrees with what I've said, but I don't think what I've said is unfair or unreasonable.
- Despite what Mr H1 says, I don't agree that the delay was in the region of eight to ten weeks, for the reasons I've explained. On the face of the evidence, I can't justify a finding that Aviva is responsible for a delay of this length and not making such a finding doesn't mean I'm vindicating Avia or any of its wrong doings.
- Mr H1 will be aware that Aviva is still very much contesting that its responsible for any delays at all.
- Just because there's been a delay doesn't mean that compensation will automatically be due. I'm not looking for a methodology that will ensure that redress will be paid, so I don't agree that my redress means the policyholders have been overpaid - or put differently, that they'll be worse off by £2,000.
- This also doesn't mean that my (uphold) decision is inconsistent or confusing – I'm sorry if Mr H1 feels that way – because my awarding redress is not contingent on there being a loss, and redress is only payable if there is.
- I still don't know if there's a loss, but despite what Mr H1 says about the fluctuations in the value of the investments, compensation (with 8% simple interest) is only due if there is.
- I should clarify that as this is a complaint from Mr H1 and Mr H2 only, the redress calculation is only in relation to the segments of the bond that belong to them.
- I note this complaint doesn't involve the rest of the owners therefore I don't think Aviva is wrong to say that it won't disclose the surrender values in relation to the other segments that don't belong to Mr H1 and Mr H2.
- I note Aviva said that it can disclose the figures for Mrs H but that's only because Mr H1 (as executor) has authority in respect of her investments, therefore he can have access to the information should he wish to.
- I'm also aware that this complaint isn't brought on behalf of Mrs H, therefore any issue specially in relation to her payment is something that Mr H1 will have to raise with Aviva, and if it's not settled he can then consider bringing a complaint to our

service.

I appreciate that Mr H1 and Mr H2 will be thoroughly unhappy that I've not been persuaded to change my mind and award the redress that Mr H1 has been requesting.

Furthermore, I still realise my decision isn't what they want to hear. Whilst I appreciate their frustration, I'm not persuaded Aviva are required to do anything other than what I've set out.

In other words, on the face of the available evidence, and on balance, I can't give them what they want.

Putting things right

To put things right, Aviva Life & Pensions UK Limited should compare the value of each of the two bonds (bond UZ and bond UL) – in terms of the segments belonging to Mr H1 and Mr H2 – when they were encashed, with the value they would've been if they'd been (respectively) encashed three and six weeks earlier.

If there's a difference, Aviva should pay the loss with 8% simple interest from the date of payment to the date of settlement.

My final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint.

Aviva Life & Pensions UK Limited should work and [ay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H and Mr H to accept or reject my decision before 18 October 2024.

Dara Islam
Ombudsman