

## **The complaint**

Mrs S, with the help of her representative, has complained about the poor service and delays she experienced trying to surrender part of her Investment Bond held with Aviva Life Services UK Limited ("Aviva"). She believes the effective date of surrender Aviva used to calculate the surrender value is incorrect and as a result she has lost out financially having lost out on the growth she would've achieved had she invested with her new provider earlier.

## **What happened**

Mrs S is the holder of the bond. However Mr S holds a Lasting Power of Attorney (LPA) for Mrs S due to her suffering a debilitating health condition so is her legal representative and the majority of the liaison with Aviva has been carried out by him.

Mrs S took out the investment bond with Aviva in 2002. In November 2023 Mrs S decided to make a new investment with a different firm I will refer to as Firm H – the partial surrender of the bond with Aviva was to be used to fund this.

On 29 November 2023 Mr and Mrs S had a review meeting with Firm H. The Firm H adviser called Aviva during this meeting where they gave authority for him to discuss the policy. They asked how they could arrange a withdrawal and were advised this could be done over the phone, using surrender forms or the adviser could complete it online. The adviser asked for surrender forms to be sent out. On 6 December 2023 Aviva received the completed surrender forms.

From 13 December 2023 onward there then ensued a number of phone calls between Mr S, on behalf of Mrs S, and Aviva mainly surrounding the potential tax implications of the withdrawal and to check which surrender method he wished to choose. Mr S had to check details and information with his financial adviser on a number of occasions but seems to have provided prompt responses to Aviva when required.

In an email on 19 December 2023 Mr S complained to Aviva about the delays incurred to date.

Aviva continued to request further information from Mr S. On 21 December 2023 Mr S confirmed the amount of segments to be surrendered and also asked Aviva to hold the surrender until 2 January 2024.

On 22 December 2023 Aviva called again about the withdrawal and spoke to Mrs S. When questioned about the surrender she said she didn't know why the surrender was needed or how the money would be used. The call was then passed to Mr S who explained the reason for the withdrawal. Due to the comments made by Mrs S Aviva requested a copy of the LPA to evidence they could accept instructions from Mr S.

The LPA was received on 28 December 2023. On 1 January 2024 Mr S emailed Aviva instructing that it mustn't proceed without speaking to him first. Aviva called Mr S on 2 January 2024 but it wasn't a convenient time to talk and was asked to call back the following

day. When Aviva called on 3 January 2024 Mr S confirmed the surrender could proceed. The surrender was processed on 4 January 2024 with an effective date of 3 January 2024.

Aviva investigated the complaint and upheld it because it accepted that it had delayed the withdrawal by three days at the start of the process and also because they had provided some poor service on some phone calls relating to the tax implications of the withdrawal. In total Aviva offered, and paid, Mr S £250 in recognition of this.

Mr S was unhappy with Aviva's response to his complaint and so brought the complaint to this Service. He explained he was unhappy with the time it had taken Aviva to surrender part of the bond. He feels that the date for surrender should be backdated to a number of points in December and had that happened a higher value would have been surrendered. He feels that Aviva should have requested the LPA much earlier than it did and that Aviva in fact had numerous conversations with him before querying why he was leading the surrender rather than Mrs S. He also didn't feel the £250 that Aviva paid him for poor service he received and the impact of that was sufficient to reflect the effect these had on him.

The complaint was assessed by one of our investigators who felt it couldn't be upheld. He was satisfied that Aviva had used the first available date for the surrender value mainly because the LPA hadn't been received by Aviva until 28 December 2023 and Aviva couldn't surrender Mrs S' policy without this. He also felt the £250 Aviva had offered to be enough to recognise the poor service Mr S and in turn Mrs S had been provided with.

Mr S didn't accept the assessment. So as no agreement could be reached the complaint has been passed to me to decide.

### **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.

I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

Firstly, I appreciate the strength of feeling Mr S has about his experiences with Aviva and I can understand this has been frustrating for him.

However, I must make it clear that as an independent service my role is to look at all the information in front of me and objectively decide whether Aviva has made any mistakes or errors in its dealings. And if so I must direct it on how to make things right.

In this case it seems to me that there are two main issues to decide: whether there was a delay in processing the surrender of part of the bond; and whether the amount Aviva has paid due to its poor service and delays sufficiently recognises the impact these errors have had on Mr S.

Turning first to the matter of any delays above that which Aviva have already compensated for.

It took from the end of November 2023 to the very beginning of January 2024 for the bond to be surrendered as per the instructions from Mr and Mrs S. Having looked at all of the evidence I don't think the process was as smooth as it could have been.

There were some issues at Aviva's end which prevented it from accessing the set up documents for her policy which were needed to verify her signature on the withdrawal forms. This could have been prevented. But this is in part what the £250 has been awarded for.

The question is whether the surrender could have been processed any earlier. And I don't think it could. I say this because the policy was in Mrs S' sole name and while Mr S was representing her at that point in time before Aviva was made aware of her health problems Aviva was entitled to think Mrs S was in a position to give the instructions – hence Aviva's need to speak to her and clarify the issue of potential tax implications of surrendering her policy.

Mrs S' capacity issues were not discovered until December at which point Mr S made it clear that her health was so poor that he had an LPA over her financial affairs. Because of this only once the LPA documents had been received by Aviva was Mr S legally allowed to surrender the bond on her behalf.

As to whether Aviva should have known earlier about the LPA I don't think it could have. It has confirmed that it held no LPA on file despite it being registered in 2012. And also Mr S hadn't mentioned Mrs S' health condition before the time the phone call took place directly with Mrs S when capacity issues became clear.

A business wouldn't have known, nor should it have assumed, there were capacity issues – its reasonable this was Mr S' responsibility to tell Aviva at the start of the surrender process in order to avoid any delays.

So it's reasonable to me that Aviva wasn't in a position to start the surrender process until this document had been received. As I have said this was on 28 December 2023 however, at this time Mr S had instructed Aviva to hold off on surrendering until the beginning of January. Therefore, while the surrender could have taken place almost directly after 28 December it was due to Mr S's wishes that it not take place until a few days' time.

I am therefore satisfied that the surrender of part of Mrs S' bond couldn't have happened any earlier than it did on 4 January 2024.

Turning now to the issue of the payment offered to Mr S. As noted above there were delays on the part of Aviva. Aviva has accepted this. Furthermore, Aviva has accepted that its service did fall short. So again, as noted above, it made an offer of £250 in total.

I don't doubt that this matter has been difficult for Mr S – dealing with this along with the situation Mrs S is in I'm sure has been stressful. However, our awards for this type of issue are modest unless severe distress and inconvenience has been caused. I don't think this is the case in this situation. Nevertheless, Aviva must recognise the impact its delays and poor service has had on Mr S and it is my view that the 250 is sufficient in this regards. The delay didn't cause any delay in actually surrendering the bond as dealt with above. And the poor service should never have been suffered. But the bond has been surrendered now and while its disappointing that this situation has arisen its important Mr S bear in mind that this Service cannot "punish" a business for any wrongdoing. And in my view an award of anything higher would be punitive and inappropriate.

**My final decision**

For the reasons set out above my final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 23 April 2025.

Ayshea Khan  
**Ombudsman**