

The complaint

Mr B complains that Aviva Life & Pensions UK Limited (Aviva) transferred his pension plan before he'd taken UK-regulated financial advice and without receiving the required Confirmation of Advice (COA) form. This has led to Mr B losing the guaranteed benefits on his plan. Mr B also said that it's been difficult to communicate with Aviva.

What happened

Mr B had a pension with Aviva which had a guaranteed annuity which applied if the benefits were taken in line with the terms of the plan conditions. In July 2023, he started to enquire about transferring his pension to a country I'll refer to as country A.

Aviva said it issued overseas transfer out forms to Mr B on 11 October 2023. It said that the forms stated: *"This plan has a guarantee relating to the annuity. This is a valuable option which will be lost on transfer"*. It said it then received completed transfer forms on 16 October 2023.

Aviva said it issued an annual statement to Mr B on 24 October 2023. It said this confirmed that the plan had a guarantee which he could use if he took his benefits as income from it.

Aviva said that it sent an email on 27 October 2023 which included the COA form and the Pension Wise guidance form for Mr B to complete. It said that it then received an email on 8 November 2023 which had the Pension Wise guidance form attached. It uploaded this to its systems on 9 November 2023.

Aviva said that on 27 November 2023, its transfer team asked its retirements team to confirm if the COA was required. It said the retirements team said that the COA wasn't required. Then on 28 November 2023, Aviva authorised the transfer out and it was completed with an effective date of 9 November 2023. I understand that £44,467.25 was transferred.

Mr B said that In early December 2023, his country A pension fund, that he was considering sending his Aviva funds to, told him it'd unexpectedly received the money. He felt Aviva had *"jumped the gun"* on the transfer and wanted it to help him sort this out.

Mr B said that he emailed Aviva on 8 December 2023. He said he'd been thinking about whether to transfer his pension to country A. And that he'd completed some of the documentation. But despite not completing all of the required forms, his funds had been transferred to country A before he'd had his final conversation with a UK-regulated financial adviser about the annuity guarantee. Mr B said he'd only received full paperwork in late November 2023.

Mr B said that despite trying to call Aviva, and after having re-sent his 8 December 2023 email, he didn't hear from it until 8 February 2024. It emailed him that day to ask him a few questions about his transfer. These were:

- *have you accessed the money from the transfer.* Mr B responded that he hadn't.

- *Are you intending to return it assuming you haven't accessed the funds yet?* Mr B said he'd been in the process of seeking advice from a UK adviser when it'd been transferred.
- *are you planning on getting UK financial advice?* Mr B said he was.

Aviva asked Mr B what he wanted it to do.

Mr B told Aviva he was worried about this whole process. And said he needed to know what Aviva was proposing to do.

Aviva emailed Mr B on 22 February 2024. It apologised for any confusion it might've caused. It said that if Mr B wanted to proceed with the transfer, it would need a COA form to be completed and returned to it. It attached a copy of that form.

Aviva said that if, following the advice, Mr B wanted his plan to be re-instated, it would consult with its technical support to see whether the transfer could be reversed. It acknowledged that it shouldn't have proceeded with the transfer without receiving the completed COA form. And said while a reversal wouldn't normally be possible, it would look into it.

Aviva said that it needed to know what Mr B planned to do about the transfer before it could take any further steps. It acknowledged that this was a stressful situation for him. And said it would arrange for a call with him if that would help.

Mr B replied the same day, stating the following:

"This transfer cannot be reversed as I have paid the [XXX] tax on the transfer with how it works in [country A] & the fact it took over 30 days I have lost this opportunity."

Mr B said he was extremely disappointed that Aviva hadn't taken the appropriate steps to protect him as a customer. He said he'd wanted to get UK-regulated advice before he decided whether to transfer or not and felt that Aviva had taken that away from him. He wanted compensation for this.

Mr B said he didn't then hear anything from Aviva, despite repeated attempts to contact it, until 8 March 2024. Aviva said it was looking into his complaint about the fact that it'd transferred his plan before it'd received his COA form. It asked him to confirm what action he would've decided to take with his plan if it hadn't carried out the transfer. It explained that if Mr B had decided not to proceed with the transfer, he could only have claimed the guaranteed benefits on the plan on his 65th birthday in a few years' time.

Mr B said he responded the same day. He said that he'd been in the process of getting UK-regulatory advice when the incorrect transfer had been made. And that based on the information he had, he felt it would have been better to remain in the fund. Mr B said he didn't know for certain which action was best yet, because Aviva hadn't given him the available options.

On 13 March 2024, Aviva emailed Mr B to tell him what was happening with his complaint. It said it was still reviewing everything in detail. It also said that it couldn't reinstate the plan or accept any returned funds. It explained that this was because the transfer out to a Qualifying Recognized Overseas Pension Scheme was deemed to be a Benefit Crystallisation Event, which wasn't reversible.

Aviva said that this meant Mr B didn't have any options left with it as it couldn't reinstate his

plan. It said it was looking at what compensation it needed to pay him.

On 18 March 2024, Aviva asked Mr B to provide it with information about how and when he would claim his pension with his country A provider. It said it needed this so it could review any financial detriment. Aviva stated:

When you've claimed from your pension with your other provider, please can you provide the below information:

- 1. Retirement option taken/how you've chosen to withdraw your money*
- 2. Value of your fund on the pay-out date*
- 3. Details of the payment or income you're receiving*

This will allow us to draw up a comparison on what you've claimed and what you could have received with our policy.

Mr B replied the following day. He said he hadn't started retirement yet. But he felt that he'd need twice the amount transferred to be able to buy back the retirement income he'd lost. He said he'd have to seek financial advice about this at a cost in country A.

Mr B said that based on his transferred funds, he'd need another £53,000 to put him back into the position he should now be in but for Aviva's error. He said this figure didn't include the cost of advice, or the ongoing distress and inconvenience.

Aviva replied the same day. It acknowledged that it would take some time for Mr B to go through his options with his country A plan before he claimed on that plan. It said that when he'd claimed the benefits from that plan, it would need the exact figures of the retirement option he'd gone ahead with. It asked Mr B to provide it with a copy of his confirmation letter once he'd done so, so that it could review the financial loss.

Mr B replied to Aviva on 20 March 2024. He felt he'd spelt out exactly what the error had cost him. He said he didn't want to wait years before he could claim what he'd lost.

Aviva replied the same day. It still said it would need to see proof of his retirement claim, including the actual figures, at the point when Mr B did decide to go ahead with his chosen option. It said that the figures he'd provided were only rough estimates, which would change over time. And that it couldn't carry out a fair comparison on any financial loss until he'd claimed his benefits from his country A provider, when he could provide it with confirmation of what he would receive from that plan.

Mr B said he then replied to Aviva the same day, after taking advice. He said he'd be taking his complaint to this service.

Aviva issued its final response to the complaint on 22 March 2024. It said it'd received Mr B's transfer out request on 16 October 2023. It said that the transfer forms he'd signed had stated:

This plan has a guarantee relating to the annuity. This is a valuable option which will be lost on transfer.

Aviva therefore felt that when Mr B had signed and returned this form, he'd agreed to the terms of the transfer.

Aviva also said that it'd sent Mr B information about his plan's guarantee in his annual statements. It said that the statements it'd issued to him in 2022 and 2023 had both confirmed that his plan had a guarantee, that the option could only be taken with it, and that it would be lost on transfer.

Aviva said it received Mr B's Pension Wise Guidance form on 8 November 2023, but didn't receive the COA form, despite having sent them to him at the same time. It acknowledged that it didn't wait to receive Mr B's COA form before it completed his transfer request.

Aviva repeated the offer it'd previously made to assess any financial loss its error had led to at the time that Mr B took the benefits from his transferred funds. It also repeated what it would need Mr B to provide so it could carry out that assessment.

Aviva acknowledged that its error had caused Mr B stress and upset. It said it would send him £250 to apologise for its errors.

Unhappy, Mr B brought his complaint to this service on 27 May 2024. He said that although Aviva had admitted its error and offered to assess any loss, he still wasn't clear what information Aviva would need to carry out the loss assessment. He said it'd asked him for a "claim confirmation letter", but that it hadn't made it clear what this was. He wanted this service to spell out for him what Aviva needed.

Aviva told this service it'd offered Mr B the only possible solution to ensure he wouldn't lose out because of its error. It also still felt that the £250 compensation it'd offered Mr B was fair. It said this was in respect of one large error coupled with communication issues. And felt there should be no further distress going forward as Mr B now knew that regardless of how his transferred pension performed, Aviva would carry out a full comparison of the benefits when he retired, to ensure he didn't lose out.

Our investigator said that Aviva had accepted that it'd made an error when it'd processed the transfer without waiting for the COA form. But he felt that the loss calculation it'd offered to carry out when Mr B eventually took his retirement benefits was fair and in line with what this service would've otherwise recommended. He also felt that the £250 compensation it'd offered to pay Mr B for the distress and inconvenience it'd caused was reasonable under the circumstances.

Mr B didn't agree with our investigator. He said he'd asked Aviva to take the money back but it'd refused. He said he felt extremely stressed by the fact that Aviva had affected his retirement funds. He felt that his time and effort in this matter was only just starting.

Our investigator told Mr B that while it wasn't this service's role to punish a business for making an error, it was our role to ensure he would be put back to the position he would've been in but for the error. He said this would normally mean that Aviva reversed the transfer and reinstated the exact plan Mr B had held with it, including the guaranteed benefits. But this wasn't possible here.

Our investigator felt that the loss calculation Aviva had offered to carry out once Mr B had taken his pension benefits was reasonable, as it would work out the guaranteed benefits Mr B might've lost as a result of the error, and would then compensate him for that loss. He felt this was the closest way to put Mr B back in the position he would've been but for Aviva's error.

Mr B felt that Aviva's loss calculation offer was incredibly impractical for both parties. He also felt that the compensation offered was wholly inadequate in his circumstances. Mr B said he'd already paid for advice to help him with the communication to date. He made the

following points:

- it was Aviva who'd first said it wasn't possible to recall the funds. And that if he had also stated this, it was because it'd already told him this. He didn't think that Aviva had explained why his funds couldn't be returned.
- if the transfer couldn't be reversed, he needed to better understand Aviva's offer to carry out a loss calculation when he took his pension benefits. He wanted Aviva to explain the exact formula it would use, taking into account the country A system of taking benefits compared to the guaranteed income he would've received for life from Aviva. He felt this would be either impossible or extremely costly for Aviva. He also said that he'd have to have faith that Aviva would still be in business. And that he didn't want to take this risk.

Mr B also said that he felt a one-off payment now would potentially save him and Aviva all the effort and cost the solution it'd offered him would take, for what he noted was a relatively small pension.

- Mr B felt that he'd have to pay for advice at the point he received Aviva's actual proposal to confirm that it was fair. He therefore felt that its offer of £250 compensation to be totally inadequate, as he felt he'd have real costs relating to the further advice he'd need. Mr B also explained to this service that he had mental health issues which had been made worse by the issue at the heart of this complaint. He also told us that he'd had financial difficulties and dependants which meant that his pension was critical for his future. Mr B acknowledged that he hadn't told Aviva about these issues. He said this was because it'd been completely unsympathetic and unapologetic, and that it'd never asked nor cared what effect its error had had on him. Mr B felt that distress and inconvenience compensation of £5,000 would be appropriate in his case.

Mr B said he wanted a resolution where he didn't have to wait until he retired or died for Aviva to put things right.

As agreement couldn't be reached, the complaint has come to me for a review.

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 agree with our investigator that the compensation Aviva has offered to pay Mr B for its error and the communication difficulties and the steps it's agreed to take to put things right are fair under the circumstances of this complaint. I know this will be disappointing to Mr B. I'll explain the reasons for my decision.

Where a business has made an offer to settle a complaint – as Aviva has done – what I have to decide is whether, in all the circumstances, that offer is fair and reasonable.

In this case, Aviva has acknowledged that it made an error when it completed the transfer of Mr B's pension to his country B provider without waiting for his completed COA form. This meant that Mr B didn't have the chance before then to consult a UK-regulated financial adviser to find out whether it was in his best interests to transfer to country A. It also meant that Mr B lost any potential to benefit from the guarantees on his Aviva plan.

Aviva has offered to carry out a loss assessment at the point that Mr B takes the benefits

from the pension he transferred to country A. It's also offered to pay him £250 compensation for the distress and inconvenience it's caused.

I first considered whether the settlement offer is fair.

Is the settlement offer fair?

Mr B doesn't think Aviva's offer to put things right is fair. He wants Aviva to put things right now, rather than waiting for him to take his benefits from his new pension provider. He feels that a one-off payment now would potentially save him and Aviva time and expense.

Mr B also needs more clarity about what information Aviva will need from him when it eventually carries out the loss assessment. And a much clearer picture about what Aviva's offer might mean for him if it isn't possible to reverse the transfer.

Aviva said that whatever retirement Mr B takes from his country A provider, it will compare that with what his pension would've been in the UK if he'd kept his pension with it. And if that comparison shows he's made a loss, it'll pay him financial redress in line with this service's rules. But it can't do this until Mr B takes his retirement benefits.

I'd first like to say that I'm satisfied that the transfer can't be reversed, for the reasons Aviva has already stated.

I do acknowledge that Mr B considers that the loss calculation Aviva has offered to carry out when he eventually takes his retirement benefits would be either impossible or extremely costly for Aviva. I also appreciate that the fact that the assessment will have to wait until he takes benefits means there's a risk that Aviva might not still be in business. But I can't reasonably ask Aviva to carry out a loss calculation now.

I say this because, as it stands, there's no evidence that Mr B has, or will, make a financial loss because of Aviva's error. I understand that under the terms of his Aviva plan, Mr B could only have benefited from the guarantees on his plan if he took his benefits on his 65th birthday. As that's a few years' away, I have no way of knowing whether Mr B will have lost out financially because of Aviva's mistake until he accesses his transferred benefits. In short, until Mr B actually takes his benefits, there's no evidence of an actual financial loss. And while I appreciate that he's provided Aviva with a rough approximation of what he thinks its error has cost him, there's not enough evidence to support this.

Therefore, while I understand why Mr B would like Aviva to calculate his loss now, I can't reasonably ask it to. I can, however, ask it to provide him with more clarity about the information it will need from him when it eventually carries out the loss assessment.

I next considered whether Aviva treated Mr B fairly once it identified its error.

Did Aviva treat Mr B fairly?

The evidence shows that on 8 February 2024, Aviva emailed Mr B to ask him whether he intended to get UK financial advice. He said he planned to.

I therefore think it was reasonable for Aviva to say it needed to wait to see if Mr B would've still wanted to transfer once he'd taken advice. And if he didn't, whether it was possible to reverse the transfer. And while I acknowledge that Mr B doesn't consider that Aviva tried to help, I think it did.

I can see that Mr B felt that Aviva should be proposing a solution to him. But until he'd taken

the advice he said he still intended to take, Aviva couldn't reasonably know what he would want to do. He'd already completed most of the transfer paperwork before he'd taken the advice he should've needed. And despite that paperwork, and the annual statements Aviva sent Mr B in 2022 and 2023 making it clear that he would lose his guaranteed benefits if he transferred away from Aviva, Mr B still completed the transfer forms.

I can also see that Mr B told this service that documents Aviva had sent him placed: "*great emphasis on making sure that I understand that the fund may have a demutualisation terminal bonus. Also, they mention that my corporate plan included a scheme guarantee relating to the annuity.*" I'm persuaded that this shows that Mr B knew that he would lose the guarantees if he transferred before he completed the transfer forms.

The evidence also shows that Aviva confirmed to Mr B on 22 February 2024 that it needed to know what he wanted to do before it could take any further steps to put things right. It offered to arrange a call to discuss things with Mr B if that would help, but I can't see that he asked to take up that offer. I think it was reasonable for Aviva to take this position once Mr B had told it he intended to first seek the UK regulated financial advice he would need so he could properly consider whether or not to transfer. And, having taken that, to then decide on whether he wanted to leave the money where it was, or transfer it back. And I don't think it would be reasonable to expect Aviva to offer Mr B other options until he'd got the advice he'd confirmed he intended to take.

Mr B said Aviva had been the first to say it wasn't possible to reverse the transfer. But the evidence shows that it was Mr B who, on 22 February 2024, emailed Aviva to tell it that his transfer couldn't be reversed.

Mr B also said that Aviva had stopped him from getting advice. But I'm not persuaded that it did. I say this because once Mr B had confirmed he still intended to take advice, Aviva explained that he should take that advice and then make his decision about what he wanted to do with his plan. It didn't know at this point whether or not it would be possible to reverse the transfer. But I consider that it made a fair offer to try to reverse it if that's what Mr B told it he wanted to do after taking the advice he said he planned on taking.

Mr B also felt that Aviva hadn't explained why his funds couldn't be returned. Again, the evidence shows that Aviva explained in both its 13 March 2024 email to Mr B, and in its final response letter, why it couldn't reinstate his plan.

I'm therefore persuaded that Aviva treated Mr B fairly once it'd identified its error.

I next considered whether the distress and inconvenience compensation Aviva has offered Mr B is reasonable under the circumstances.

Distress and inconvenience

Mr B said Aviva's error has caused him significant stress. He's told this service about the mental and financial challenges he's recently faced, so I can understand why this situation has caused such upset.

I'm very sorry for the issues Mr B has faced. However, while I do acknowledge Aviva's mistake has caused some stress, I can't fairly say that Aviva is responsible for all of the financial and mental challenges Mr B is coping with. I say this because although there is the potential for Aviva's error to have caused Mr B a financial loss, that error hasn't prevented him from accessing funds he might've otherwise needed to access. Instead, it will only be possible to assess the financial impact of that error once Mr B takes his retirement benefits.

Mr B has also clearly been inconvenienced by Aviva's error. He feels that his time and effort in resolving this situation is only just starting.

While I understand why Mr B feels this way, I explained earlier in my decision why I can't fairly ask Aviva to work out some sort of approximate financial redress for him now. I'm also satisfied that although Aviva isn't in a position to carry out a loss assessment at the present time, it will do so when it can. Therefore I'm not persuaded that Mr B needs to take any further steps to resolve this situation than those Aviva has already outlined.

I can see that Aviva outlined the information it would eventually need to carry out its proposed loss calculation on 18 March 2024. But I appreciate that Mr B needs some additional clarity on what Aviva will need from him. So I'm going to ask it to provide that as part of this final decision.

Mr B also told this service that he'll have to pay for advice when Aviva finally carries out his loss assessment to confirm that it's fair. For this reason, as well as the other reasons I've referenced earlier, he feels that Aviva should pay him significantly greater compensation. He thinks it should pay him no less than £5,000, plus costs.

I can't fairly ask Aviva to cover the cost of any advice Mr B chooses to take. I say this because this service doesn't require businesses to get their loss calculations professionally checked. So we can't reasonably ask Aviva to cover the cost of Mr B doing that.

I've carefully considered Mr B's request for at least £5,000 compensation. Having done so, I'm not going to ask Aviva to increase the compensation it's already offered him. I say this because although its error has caused Mr B distress and inconvenience, Aviva has taken steps to put things right. And I consider that its offer will ensure that Mr B doesn't lose out. Aviva acknowledged its mistake quickly and tried to work with Mr B to find an acceptable solution. I therefore consider that the £250 it has already offered him in respect of the distress and inconvenience caused is reasonable under the circumstances.

While I uphold this complaint as Aviva has yet to take all of the steps it's offered to take to put things right, I'm not going to ask it to do anything more than it's already offered to do.

Putting things right

My aim in awarding fair compensation is to put Mr B back into the position he would likely have been in, had it not been for Aviva's error. This position will only be known once Mr B takes his retirement benefits from the transferred funds.

What Aviva Life & Pensions UK Limited must do

To compensate Mr B fairly Aviva Life & Pensions UK Limited must:

- At the point that Mr B first takes his retirement benefits from the transferred funds, Aviva must compare those benefits with what they would have been if he'd left his funds in this Aviva plan.
- If there is a loss, the compensation amount should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional

reduction to allow for future income tax that would otherwise have been paid.

- Provide the details of the calculation to Mr B in a clear, simple format. This must include additional clarity about the information Aviva will need from Mr B when it eventually conducts the loss assessment. If Mr B wants further clarity from Aviva about how it will carry out his loss assessment at the point that he receives my final decision, Aviva should arrange a call with him to answer any questions he might have.
- If Aviva Life & Pensions UK Limited hasn't already paid the £250 it offered Mr B for the distress and inconvenience caused, it must pay this to him directly.

My final decision

For the reasons set out above, I uphold Mr B's complaint. Aviva Life & Pensions UK Limited must take the action detailed in "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 30 December 2024.

Jo Occleshaw
Ombudsman