

The complaint

Mr W complains about the delayed in-specie transfer of his Stocks and Shares ISA from Aviva Life & Pensions UK Limited to a third-party provider (referred to as “the transferee”).

To put things right, he’d like compensation for losses claimed.

What happened

Aviva upheld the complaint, in summary it said:

- It mistakenly used the wrong email address when messaging the transferee. But it wasn’t made aware of this for a period of two months.
- Once aware, it emailed the correct email address, and the transfer was completed on 18 September 2023.
- Had it not caused any delays, the transfer of the HSBC FTSE ALL World Index C Acc fund (‘the World Index fund’) would’ve happened on 20 June 2023.
- For any financial losses to be paid, it needed clear evidence showing Mr W’s intention to invest in the LSE ETF SPXP (Invesco S&P 500 UCITS EFT Acc) – referred to as the ‘Invesco fund’ – as claimed by him.
- It asked Mr W to provide a deal confirmation demonstrating his intention to move assets into this fund during this period or that he held assets within it.
- Having received the relevant information, on 1 March 2024 it paid the transferee an additional sum of £186.87 by BACS transfer to represent the loss.
- It also paid £250 compensation as an apology for the distress and inconvenience caused.

One of our investigators considered the complaint and thought it should be upheld. In summary, he said:

- As consequence of the payment of redress, the transferee initially confirmed that a sum of £186.87 was received and was added to Mr W’s ISA wrapper. However, the money was subsequently returned.
- Whilst he’s satisfied the redress calculation is correct, Mr W is still not in the position he would be in put for the error by Aviva.
- So, to put things right, Aviva should contact HMRC to explain the situation and arrange for the sum of £186.87 to be placed back into Mr W’s ISA – within the ISA allowance for the tax year 2023/24.
- If it can’t be done, it must provide evidence of its efforts, then alternatives can be considered.

Aviva made the following observations:

- On 31 May 2023, it received the request to transfer funds to the transferee. On 29 September 2023, the transfer was eventually completed.
- On 1 March 2024, it forwarded a sum of £186.87 to account for the financial loss.
- The payment was still within the tax year – payment could still have been made to

the ISA – so in the circumstances it's not at fault and doesn't believe it needs to take any further action.

- It hasn't contacted HMRC because it was following its correct procedure in forwarding financial loss to the new provider. This money would've formed part of the original transfer and that's what it has done.
- Mr W's account shows that the last payment into the ISA was in March 2023, so he/the transferee hasn't paid into the ISA that was transferred in that tax year.
- Any additional funds sent should've formed part of the original transfer value, which would relate to the previous year's subscriptions.
- If the transferee has counted this as the current year's subscription, it will need to correct this.
- It's not sure what more it can do, other than to confirm (to the transferee) that it should've formed part of the original transfer value, which related to the previous year subscriptions.

As there was no agreement between the parties, the matter was passed to me for review.

At my request, the investigator asked Aviva a number of questions to which it provided the following answers:

- Aviva confirmed that it provided a subscription history to the transferee as part of the transfer process.
- It included the email trail in terms of what the transferee said upon returning the money.
- It confirmed that it sent the transferee the relevant subscriptions on 29 April 2023

In late August 2024, 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, I'm going to uphold this complaint.

I note that Aviva has already upheld the complaint and paid some compensation – the financial loss part of which was paid after the case was referred to our service.

In any case, an outstanding issue remains with regards to the tax wrapper, and whether or not Aviva's responsible for any additional tax liability that might arise.

In this instance, and on balance, provisionally my reading of this case is that Aviva has done all it reasonably can to put things right and therefore isn't responsible for any further (financial) liabilities that might arise.

Because Aviva upheld the complaint, the key issue for me to consider is redress and whether or not it's fair and reasonable in the circumstances and that's what I've done in this case.

On balance, I think the monetary element of the redress – marking the financial loss – is fair and reasonable. I understand that the sum paid (and subsequently returned which I will consider below) is the gain that Mr W would've made had he been able to transfer his ISA and invest in the Invesco shares sooner.

I think the £250 compensation paid for the distress and inconvenience caused by the delays is also fair and reasonable in the circumstances.

The above notwithstanding, in the circumstances and on balance, provisionally I don't think Aviva is responsible for the additional tax losses claimed by Mr W.

I uphold this complaint, in summary, for the following reasons:

- *I note Aviva says it received the in-specie transfer request on 31 May 2023.*
- *It says that had the request been carried out without issue – notwithstanding the time taken to receive information from third parties such as the transferee and the fund manager – the transfer would've happened on 20 June 2023.*
- *I note that the main issue (causing delay) is related to Aviva using the wrong email address, and some issues transferring the World Index fund.*
- *In the circumstances I can't say that this date is an unreasonable basis for calculating redress. I've seen nothing to suggest that it's inappropriate or inaccurate. I note Mr W takes no issue with this date either.*
- *I note that on 1 March 2024, a sum of £186.78 – representing the financial loss suffered as a result of the delayed in-specie transfer namely Mr W not being able to invest in the Invesco funds sooner as a consequence of the initial ISA transfer delay – was paid to the transferee via BACS transfer.*
- *I can't say that Aviva behaved unreasonably in the circumstances.*
- *I note that as result of information supplied by Mr W, Aviva's dealing team established that he could've still purchased "35 units" in the Invesco fund. I've seen no evidence to suggest that this is inaccurate.*
- *I note that in response to Aviva's enquiry the transferee confirmed that the sum of £186.78 was received on 5 March 2024 and added to Mr W's (transferee) account. But it wasn't able to apply the 2023/24 tax year allowance.*
- *I note in response to the question about which tax year this was applied to, the transferee said:*
 - *"The payment was received and added to the clients account on 05 March 2024. We have not had confirmation of CY subscriptions so we have not been able to apply any usage of the 2023/24 tax year ISA allowance to our records.*
 - *As this was a transfer, we only need to record the current year subscription and do not need to record anything prior to that. Any 2022/23 allowance should be held within your records."*
- *I note the transfer was made within time, so that it could've been included in the 2023/24 tax year allowance. It's not entirely clear why it wasn't.*
- *Despite what the transferee says as the possible reason for the return, based on what Aviva says, I'm satisfied that the relevant subscription history was sent as part of the overall transfer process. Unless I've missed something crucial, I'm unable to say that Aviva could've done anything differently.*
- *I note this money was (subsequently) paid into to Mr W's nominated bank account, because (presumably) it couldn't remain in the ISA, but in the circumstances, I can't say that this was as a result of anything done by Aviva by this time.*
- *It's possible that there was an error on the part of the transferee – although I make clear that's not what I've been considering in this complaint against Aviva so I can't comment on this any further.*

I appreciate Mr W will probably be unhappy that I've not awarded redress for the losses claimed. I realise my decision isn't what he wants to hear. But on the face of the available evidence, and on balance, whilst I have upheld his complaint in part, I'm unable to give Mr W what he wants."

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.

Neither party responded to my provisional decision. So, at my request the investigator notified them that my final decision would be issued the following week. In an email dated 01 November 2024, the investigator said:

“The ombudsman sent you his provisional decision on 21 August 2024 and gave you until 4 September 2024 to send any final points you’d like to make – or provide any more information you think we need to see.

As the deadline has well and truly passed the ombudsman will be issuing his final decision early next week.”

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, in light of no response from Mr W or Aviva, my decision to uphold this complaint remains the same, and 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, they provided no further submissions. So, no new material points have been made that persuade me I should change my decision.

As previously set out in my provisional decision because Aviva upheld the complaint, the key issue for me to consider was and is redress and whether or not it’s fair and reasonable in the circumstances and that’s what I’ve done in this case.

On balance, I think the monetary element of the redress – marking the financial loss – is fair and reasonable. I understand that the sum paid (and subsequently returned) is the gain that Mr W would’ve made had he been able to transfer his ISA and invest in the Invesco shares sooner.

I still think the £250 compensation paid for the distress and inconvenience caused by the delays is also fair and reasonable in the circumstances.

The above notwithstanding, in the circumstances and on balance, I don’t think Aviva is responsible for the additional tax losses claimed by Mr W.

Putting things right

If it hasn’t already done so, Aviva Life & Pensions UK Limited should pay Mr W the £186.87 financial loss and £250 compensation for the distress and inconvenience caused.

My final decision

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

Aviva Life & Pensions UK Limited should pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 2 December 2024.

Dara Islam
Ombudsman