

The complaint

Mr V complains that Aviva Life & Pensions UK Limited (Aviva) unfairly refused to allow him to transfer crystallised funds from another pension into the pension plan he held with it. He had intended to take his protected tax-free cash from the other pension and then transfer the rest to Aviva but it told him this wasn't possible under the terms and conditions of his pension plan.

What happened

Mr V holds a group personal pension with Aviva, which he took out on 1 March 2012.

On 21 March 2024, Mr V called Aviva to discuss a transfer into his pension. Aviva told Mr V that while it accepted transfers in, it didn't accept crystallised funds.

Mr V then emailed Aviva the same day to complain. He confirmed that he wanted to transfer his crystallised funds into his Aviva pension and then place them into drawdown. He said that the Aviva agent he'd spoken to hadn't been able to identify where in the plan documentation the restriction he'd explained had been mentioned. He felt there was no prohibition on the transfer he wanted in the plan documentation. And that Aviva's interpretation of the scheme rules was unfair.

On 3 April 2024, Aviva issued its final response to the complaint. It didn't think it'd breached any of the plan's terms and conditions. It said that Mr V's plan hadn't been designed to accept crystallised funds which was why it couldn't carry out his request. It also said that there was no wording prohibiting the transfer in of crystallised funds in the plan documents because Mr V's plan had started in 2012 before the 2015 Pension Freedoms and the introduction of flexi-access drawdown (FAD) as a retirement option.

Aviva said that while it'd decided to offer FAD from 2017, Mr V's plan had pre-dated the option and wasn't designed to accept crystallised benefits. It said its system wouldn't be able to account for it.

I understand that on 14 April 2024, Mr V emailed Aviva to query its response. And that he sent a chaser email on 26 April 2024.

I also understand that on 10 May 2024, Aviva issued a follow up response to Mr V confirming that it could only permit uncrystallised funds to be transferred into his plan. He then complained to Aviva again.

On 24 May 2024, Aviva issued a further final response to the complaint. It explained in greater detail why Mr V's plan and its systems couldn't facilitate the type of transfer he wanted to do. It said that his plan didn't allow crystallised fund transfers which meant that it'd never built the system needed to facilitate drawdown-to-drawdown transfers. It said such a transfer wouldn't be a recognised transfer, so would be classed as an unauthorised payment.

On 19 June 2024, Aviva sent Mr V a complaint deadlock letter. Then on 26 June 2024, he

asked Aviva for a copy of the scheme rules. On 9 July 2024, Aviva sent Mr V the terms and conditions and the key features documents for his plan. He then raised a further complaint.

On 8 August 2024, Aviva issued its final response to the complaint. It didn't think it'd done anything wrong. It said the plan hadn't been designed to account for receiving and separating values dependent on whether tax-free cash had been taken. It said if it accepted a transfer of crystallised funds it'd have no way of differentiating between the incoming money. And that this would allow the plan holder an extra 25% tax-free cash on the transferred funds.

Aviva noted section 17.1 of the Scheme rules gave Aviva the right to allow a transfer of crystallised benefits into the plan at its discretion, it also stated that it didn't have to accept crystallised benefits. Aviva said that it didn't and couldn't offer this on this type of plan.

Aviva acknowledged that the crux of Mr V's complaint was that he felt it hadn't made him aware of this. But it felt it'd made it clear that the transfer of crystallised benefits was not available to Mr V.

Aviva said that it would always provide the plan's terms and conditions, and the Key Features document if a plan holder requested a copy of the Scheme rules. But it said it would refer any requests for more information to its Technical team. I understand that it enclosed a copy of the Scheme rules with this letter.

Unhappy, Mr V brought his complaint to this service as he felt Aviva knew it'd treated him unfairly.

Mr V said that the plan's documentation didn't prohibit the transfers in of crystallised pension funds. He said that section 2.2 of the plan's terms and conditions allowed transfers to be paid into the Scheme at any time, and allowed them to be held under a separate plan. He said Aviva had confirmed this in its 3 April 2024 letter. He acknowledged that the Scheme rules, which weren't routinely shared with plan holders, prevailed if there was any variation between those rules and the plan's documentation. And that the Scheme rules stated under section 17. *Transfers of crystallised funds into the scheme* that the Scheme administrator didn't have to accept a transfer of a plan holder's crystallised funds. But he said he hadn't been aware of what the Scheme rules said - or that a conflict existed with the plan documentation.

Mr V said he'd relied on the plan documentation provided. He said this had clearly stated in section 5.2 that income drawdown was available to him. Mr V felt Aviva had been grossly negligent in not disclosing the obvious plan restrictions when the plan's documentation suggested otherwise. He also felt it'd been negligent in failing to disclose in the plan's documentation that transfers were at its discretion. He'd therefore felt that he would be able to carry out the transfer he wanted within his Scheme.

Mr V said that Aviva had only told him in August 2024 that the Scheme rules didn't support the transfer of crystallised pension funds. While he didn't dispute this, he felt Aviva had clearly known about this and could've informed him and other plan holders at any time since the Pensions Act 2015. Instead, it'd only explained and evidenced this to him on 8 August 2024. As he couldn't carry out his intended transfer, he felt he'd lost out on maximising his tax-free cash.

Mr V said it'd been frustrating and time-consuming dealing with Aviva. To put things right, he wanted it to pay him an amount equivalent to the basic rate of tax he said he'd have to pay to achieve the position he should've been able to achieve if Aviva had allowed him to transfer his crystallised funds into a separate plan under section 2.2 of the plan's

documentation. He also wanted £700 compensation for additional stress and inconvenience and a written apology.

Aviva told this service that Mr V's type of plan wasn't designed to accept crystallised funds. It said that if it were to allow the transfer of crystallised funds, a plan holder could then take additional tax-free cash from the crystallised funds which went against HMRC's regulations.

Our investigator didn't think that Aviva had acted unfairly. She first noted that this service has no regulatory powers. We therefore can't require Aviva to change the way it carries out its business. She said that not all pension providers allowed the transfer of crystallised funds. She said Aviva had made it clear that it didn't, noting that she found its explanation to Mr V of why that was the case to be clear, factual and reasonable.

Our investigator acknowledged that Mr V was unhappy that the plan's terms and conditions didn't specifically prohibit the transfer in of crystallised funds. She said that Aviva had explained that this was because his plan had started before the introduction of FAD as a retirement option. She noted that the reason Mr V's plan documents didn't mention FAD was because the rules hadn't yet come into effect. And felt that Aviva's explanation was reasonable and factual. She felt that the fact that Aviva didn't have the means to facilitate Mr V's request didn't mean that it didn't want to help him, it simply meant that it couldn't take the action he wanted it to take.

Mr V didn't agree with our investigator. He made the following points:

- Aviva had drafted the plan's terms and conditions. It'd repeatedly sent the terms and conditions to him and had repeatedly told him in writing that it would rely on them. He felt that if Aviva hadn't wanted to rely on the terms and conditions it should have said so.
- Mr V said our investigator couldn't simply set aside the explicit terms and conditions and process his complaint as if they didn't exist.
- He said that the plan's terms and conditions had stated:

"2.2 Transfer values

Transfer values can be paid into this scheme at any time, they may be held under a separate plan."

He felt this was clear and unambiguous. But despite this, Aviva had failed to allow him to transfer crystallised benefits into the Scheme, causing him a loss.

Mr V said the only restriction on transfers included in the terms and conditions was:

"2.3 How much can be paid or transferred into your plan

There are HMRC rules about transfer values and about how much you and your employer can pay into your plan."

He felt that the transfer of his crystallised pension fund into the plan complied with HMRC rules, so Aviva couldn't object on that basis.

- Mr V said that Aviva had confirmed that there was nothing in the terms and conditions to prohibit crystallised fund transfers into the Scheme. He felt that as Aviva had issued amended terms and conditions many times it'd had every opportunity to

include the restrictions it now wished to rely on, but it hadn't done so.

- Mr V said he'd only found out about the new restriction when he'd tried to carry out his desired transfer online. He felt that Aviva had failed to disclose the new terms and condition when it should have.
- Mr V said that there was a distinct difference between the "Scheme" and a "plan". He said he'd been trying to effect a permitted transfer into the Scheme, which he didn't expect to be placed into the same plan. He said his contract with Aviva stated that a transfer could be paid into the Scheme at any time and it may be held under a "*separate plan*". He felt a plan was a separate contract issued to provide benefits under the Scheme.
- Mr V felt that Aviva had denied his transfer because it'd failed to do some development work.

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'm not going to uphold it. I know this will disappoint Mr V. I'll explain the reasons for my decision.

I first considered the introduction of pension freedoms.

Pension Freedoms

The government introduced changes to pension laws in April 2015. This provided for retirement options for taking benefits from April 2015 that hadn't been previously available. This meant that people could have more flexibility in the way they accessed their pension.

The Pension Freedoms legislation of 2015 can be referred to as 'enabling' legislation. This means that personal pension providers were able to offer the benefits that Pension Freedoms allowed but they didn't have to. In practice providers might offer some of the new Pension Freedoms on older policies. But, again, this is not something they must do.

The plan that Mr V has complained about is a group personal pension that was started before Pensions Freedoms were introduced in 2015.

I've gone on to consider if Aviva removed any options Mr V previously had within his plan without telling him.

Did Aviva remove any option that Mr V always had?

Mr V said that the plan documentation on which he'd relied had explained that transfers in were possible. He therefore felt that Aviva had been negligent in not disclosing that transfers in were at its discretion. He said the plan documentation had led him to believe that he'd be able to carry out the transfer he wanted within his Scheme.

Aviva said that the plan's documentation didn't include wording prohibiting the transfer in of crystallised funds because Mr V's plan had started in 2012, before the 2015 Pension Freedoms and before the introduction of FAD. It said that because of this, neither FAD or

any wording about transferring in crystallised funds was included in the terms and conditions of Mr V's plan. This meant that the plan's terms and conditions were silent on whether or not Aviva could accept or process any options relating to this.

Aviva said whilst it had decided to start offering FAD in 2017, it'd never accepted crystallised funds. But that Mr V's plan had pre-dated that option. Aviva said that his plan hadn't been designed to accept crystallised benefits, noting that its system wasn't capable of accounting for the transfer of crystallised benefits, and that doing so would allow plan holders to take additional tax-free cash on the incoming funds in breach of HMRC regulations.

I've considered the content of the Scheme rules relating to Mr V's plan. I've been provided with a deed of amendment dated 30 March 2015. This states the following:

16. Transfers of uncrystallised funds into the scheme

...

16.1 The scheme administrator may (but does not have to), at the written request of a member, accept a transfer representing the member's uncrystallised funds (and the corresponding rights) if it is a recognised transfer.

...

17. Transfers of crystallised funds into the scheme

17.1 The scheme administrator may (but does not have to), at the written request of a member, accept a transfer representing the member's crystallised funds (and the corresponding rights) if it is a recognised transfer.

I can see that Mr V accepts that the Scheme rules supersede the plan documentation. He therefore accepts that under the Scheme rules, he wasn't permitted to carry out his desired transfer of crystallised benefits, despite feeling that section 2.2 of the plan's terms and conditions allowed it. His complaint is therefore that Aviva didn't tell him about this. And that - in not telling him - it was wilfully misleading him and it caused a financial loss. Mr V said although Aviva had had a number of opportunities to include the restrictions it now wished to rely on when it'd sent him updated terms and conditions, it hadn't done so.

As I noted above, Aviva has explained that the plan's documentation didn't include wording prohibiting the transfer in of crystallised funds because it'd started before the 2015 Pension Freedoms.

From the evidence presented to me, Aviva didn't and never has accepted crystallised funds into Mr V's plan. While I can see that it would've been helpful for Mr V if the plan's terms and conditions had been clearer on this point, I'm satisfied that Aviva wasn't required to amend those terms to reflect all aspects of the Pension Freedoms.

I'm also satisfied that those terms and conditions did include another section – which Mr V has himself highlighted – which effectively disallowed the transfer in of crystallised benefits. This is section 2.3.

I say this because I disagree with Mr V that his transfer of his crystallised pension fund into his Aviva plan would comply with HMRC rules. As Aviva has explained, if Mr V was permitted to carry out his intended transfer of crystallised funds, and given its system's limited accounting capabilities, he could've then taken additional tax-free cash, against HMRC's regulations. I acknowledge that Mr V also feels that Aviva denied his transfer

because it'd failed to develop its systems. But it's entitled to take business decisions about what it wants to develop. And many other providers decided not to update systems on older plans to allow for all pension freedoms, so I don't consider that Aviva acted out of line here.

I note Mr V's distinction between his plan and the Scheme, and that he felt his transfer could've been set up as a separate plan. But, as I've just explained, the type of plan Mr V held didn't have the appropriate system in place to permit a transfer of crystallised funds, regardless of whether a separate plan was created or not.

Overall, I can't reasonably agree with Mr V that Aviva simply set aside his plan's explicit terms and conditions. Those terms and conditions didn't and never have referenced the transfer of crystallised funds because such funds didn't exist when the plan was set up. And Aviva took a business decision not to develop its systems to enable it to accept such transfers after it'd decided to offer FAD. It was within its rights to do so.

I'm satisfied that the fact that Mr V didn't find out that he wouldn't be able to carry out his intended transfer until 2024 didn't cause him a financial loss. I say this because the evidence shows Mr V's plan had never been able to accept such a transfer. I've also not found any evidence that Aviva has breached the terms and conditions of Mr V's plan. Therefore I can't reasonably uphold the complaint.

My final decision

For the reasons explained above, I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 18 July 2025.

Jo Occleshaw
Ombudsman