DRN-5879032

The complaint

Mr T complains that Aviva Life & Pensions UK Limited took too long to process a Pension Sharing Order (PSO) during which time he wasn't allowed to switch his investments. He considers this was unfair and resulted in him suffering a financial loss.

What happened

I issued a provisional decision on this complaint on 4 September 2025. The background and circumstances to the complaint were summarised in that decision (having been set out in more detail in previous provisional decisions) and are known to both parties. I've reproduced the relevant part of the 4 September 2025 provisional decision below, and it forms part of this final decision.

Copy of relevant part of Provisional Decision

I've issued two provisional decisions on this complaint. The background and circumstances to the complaint and the reasons for my provisional findings were set out in those decisions and are known to both parties, so I won't repeat them all again here. But to summarise, in May 2022 Mr T's solicitors informed Aviva of the PSO against Mr T's pension. Mr T was informed that his ex-wife would need to complete and return a 'pre-implementation form' to specify where her share of the pension should be transferred to. Aviva also explained that Mr T's pension would be suspended from the Effective Date of the Order until the PSO could be implemented, and that no fund switches could be made during this period.

Mr T's solicitor sent the necessary legal documents to Aviva around 29 July 2022. Aviva e-mailed Mr T on 8 August 2022 saying it had received the documents and confirming his pension was suspended. Mr T e-mailed the pre order form he needed to complete to Aviva on the same day. In response to queries raised by Mr T about the PSO process, Aviva re-affirmed that the usual timescale for implementing a PSO was four months from when it received the last piece of information that it required. Aviva said it was still waiting for the completed pre implementation form from Mr T's ex-wife.

The pre-implementation form from Mr T's ex-wife was received by Aviva on 14 August 2022. Aviva contacted Mr T's ex-wife's chosen pension provider (Firm A) on 17 August 2022, requesting bank details. Aviva chased Firm A on 26 August 2022. Firm A responded on 1 September 2022 to say that it wasn't aware of any transfer requests, and said it would need to contact Mr T's ex-wife itself. Firm A asked Mr T's ex-wife to complete its transfer forms on 5 September 2022 which she did on 8 September 2022. Aviva again confirmed what information it needed, and chased the information on 9 September 2022.

Firm A asked Aviva to proceed with an in-specie transfer on 23 September 2022. Aviva responded on the same date, explaining that as the transfer originated from a PSO it could only be made in cash. It asked for confirmation on how to proceed. On 29 September 2022 Firm A instructed Aviva to proceed with a cash transfer and disinvestment instructions were placed that day. The transfer was completed on 13 October 2022. The trading suspension was lifted on that day.

Mr T complained to Aviva and subsequently referred the matter to us. Our investigator didn't recommend that the complaint should be upheld. He thought Aviva had acted in a timely manner itself in processing the transfer and hadn't caused any unnecessary or unreasonable delays. In respect of Mr T's view that Aviva had acted unfairly in suspending his ability to trade his pension and that it should have 'ringfenced' his ex-wife's share of the pension and allowed him to trade, the investigator said this wasn't a function that was offered or available on Aviva's platform. He said the suspension was required in order that the plan-holder wasn't in a position to put the ex-partner at a disadvantage by making withdrawals, or placing trades that might have a detrimental effect on the pension's value. The investigator thought Aviva's motives were fair, and he thought it had applied the process fairly. It had provided advanced notice of the suspension to enable Mr T to mitigate its effects.

Mr T replied to say, in summary, that Aviva hadn't acted in accordance with some of the Financial Conduct Authority's Principles for Business. Mr T also said his lawyers had advised him not to place trades following the PSO as it could have allowed him to make significant changes or withdrawals to the pension that impacted on the amount his ex-wife would receive. As Mr T didn't accept the investigator's findings his complaint was passed to me to consider.

In my first provisional decision I said I wasn't minded to uphold Mr T's complaint. I said, firstly, that I thought Aviva had acted in a timely manner in processing the parts of the transfer it had control over. I didn't think it was responsible for any unreasonable delays.

In relation to the fairness of suspending trading on the pension, I thought the relevant Principle was Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly. And COBS 2.1 (from the Regulator's Conduct of Business Sourcebook) which required a firm to act honestly, fairly and professionally in accordance with the best interests of its clients.

The PSO came into effect on 26 July 2022 – the day the Decree Absolute was granted.

In respect of Mr T's view that Aviva should have effectively ringfenced his ex-wife's share of the pension and allowed him to trade his own share - Aviva had said it didn't have the functionality to do that. It said the Financial Adviser had direct on-line access to Mr T's investments to manage them, and it wasn't possible to ringfence part of the investment portfolio for a third party (ex-spouse).

I said the pension debit and credits were against Mr T's pension. There was still only one pension until the spouse's portion was transferred out. The terms and conditions that I'd seen were silent on how a PSO would be processed. And I hadn't seen any evidence that the process was covered in any marketing material. The product offered by Aviva didn't provide for 'ringfencing' or something similar when processing a PSO, and I accepted that Aviva's systems may not have been set up to facilitate adviser access to just part of a single plan. I said I accepted that ideally Mr T would have been able to continue to trade his part of the pension. But there was a balance, and providers weren't expected to provide products that had features specific to all circumstances.

I said Aviva did clearly notify Mr T that he wouldn't be able to trade whilst the PSO was being implemented. So Mr T had the option to switch his funds to cash if he didn't want to take investment risk during the process. Mr T's pension appeared to be invested in accordance with a medium to high level of risk, so I said there was always the possibility it might materially change in value during the period the PSO was being processed – either rise or fall. I noted Mr T had said his lawyers advised him not to place trades following the PSO. However I said switching everything to cash would effectively have ensured the position was secure during the period that the PSO was processed, which could have been up to four

months. I said this could have been agreed with the ex-spouse prior to the suspension.

So I said I didn't think it necessarily followed that Mr T's losses flowed from Mr T not being able to trade for a period – he had the option to switch to cash if he didn't want to take the risks associated with staying invested. I said I wasn't persuaded that Aviva's actions caused the 'losses' that Mr T had claimed, and I wasn't intending on upholding Mr T's complaint.

Mr T didn't agree with my provisional findings and provided a detailed response. In particular with reference to his position that Aviva should have offered a product that allowed his ex-wife's share to be 'ringfenced' which would then have allowed him to continue to trade his share of the pension. He said this was all consistent with Aviva's regulatory obligations to him as a vulnerable customer (given his relationship breakdown and divorce) and in particular with respect to Principle 6 – A firm must pay due regard to the interests of its customers and treat them fairly; the FCA's Guidance on the Fair Treatment of customers; and the FCA's Guidance on the fair treatment of vulnerable customers.

I sent an e-mail to Mr T saying, in summary, that given the requirements of the relevant legislation, I didn't think it was possible for Aviva to have ringfenced his ex-wife's part of the pension as he'd suggested without having any impact if he continued to trade. I said in processing the PSO Aviva had an obligation to comply with the Welfare Reform and Pensions Act 1999 ('the Act') and supplementary regulations. I set out the relevant parts of the Act and explained that where Section 5 referred to 'relevant benefits', these related to the transferor's shareable rights immediately before transfer day (transfer day being 26 July 2022) i.e. that all of Mr T's pension that was subject to the PSO as at that date.

I said Section 2 referred to the' appropriate amount for the purposes of subsection (1)' as being 'the specified percentage of the cash equivalent of the relevant benefits on the valuation day.' Aviva had confirmed the valuation day was 29 September 2022 (which was in the implementation period and was consistent with its selling of units). So the specified percentage was applied to the 'relevant benefits' at valuation day to determine the appropriate amount - the appropriate amount was only known at valuation day.

So I said given relevant benefits referred to the entire shareable rights, even if Mr T's ex-wife's 32% share was ringfenced at 26 July 2022, she would still have been entitled to the 'appropriate amount' at valuation day - which was a percentage of the 'relevant benefits' – a percentage of the whole shareable pension. Therefore I said the actual amount (appropriate amount) that Mr T's ex-wife became entitled to and what was debited from Mr T's pension in subsection 2 was determined on the valuation day. And I said this all meant any trades/changes made to the pension after 26 July 2022 would have had an impact on what Mr T's ex-wife would ultimately receive – irrespective of ringfencing.

So I said I didn't think the arguments about ringfencing or Aviva having to provide a product that allowed ringfencing were material, because I didn't think ringfencing achieved the aim of allowing Mr T to trade without having an impact on what his ex-wife would ultimately receive through the PSO.

Mr T responded to say that he didn't agree with this position. He said, in summary, that 'the Act' was passed in 1999. And this was before a number of important regulatory developments introduced by the regulator to ensure the protection of customers and to ensure they were treated fairly. Mr T again referred to the firm's regulatory obligations and said in applying 'the Act' today the FCA's expectation would be that firms took into account the concept of treating customer's fairly, and ensuring the fair treatment of vulnerable customers in order to achieve a good customer outcome, rather than adopting a narrow legal interpretation which didn't meet these objectives.

Mr T said 'the Act' didn't preclude the 'transfer day' and the 'valuation day' from being the same date. He said if Aviva had used 26 July 2022 as the valuation day, his ex-wife's share of the pension could have been ringfenced and he could have continued to trade.

Mr T said in choosing the valuation day as 29 September 2022 Aviva had produced an unfair outcome given the losses which he incurred and was unable to prevent as he couldn't trade. He said this ran contrary to Aviva's obligation to treat customer's fairly and provide good outcomes for all customers, and particularly its vulnerable customers.

In my second provisional decision I said when Aviva was informed that the PSO had come into effect it was on notice that Mr T's ex-wife was legally entitled to a share of the pension. And that Aviva was bound to carry out the PSO in accordance with the relevant legislation. I said in my opinion the regulatory developments since 'the Act' came into force didn't override the legislation which Aviva was obliged to follow.

I said the "transfer day" meant the day on which the relevant order or provision took effect and was set. And the valuation day had to be in the implementation period, which started when Aviva received the documents necessary to carry out the order (which I said understood was on or just before 29 September 2022). So I didn't agree Aviva could have used the 26 July 2022 as the valuation day.

I said I wasn't persuaded by Mr T's arguments that the FCA's regulatory requirements as he'd referred to required Aviva to provide a product that offered ringfencing. And it wouldn't have changed the position that any trading by Mr T on his 'share' of the pension would impact the appropriate amount that his ex-wife would ultimately receive, and which could be in a negative way – either intentionally or unintentionally. Ultimately, I didn't think that ringfencing would work in the way that Mr T had suggested.

I said Aviva had notified Mr T that he wouldn't be able to trade until the PSO had been implemented. And that Mr T had the option to switch his funds to cash if he didn't want to take investment risk during the process. Mr T had said his lawyers advised him not to place trades as he could have made significant changes to the pension which would have impacted the amount his ex-wife would receive. He said he didn't think it was 'reasonable or realistic' to expect him to agree this with his ex-wife as his divorce and financial settlement were acrimonious and protracted, and therefore his ex-wife was unlikely to agree to such an arrangement. Mr T said he was a vulnerable customer, and therefore couldn't reasonably have been expected to take this action. And that Aviva hadn't suggested this as a potential option.

I said I accepted that vulnerable customers might be more susceptible to harm. But that didn't necessarily mean that everyone who fell into a category of people who might potentially be vulnerable were unable to make informed decisions. Mr T had described the emotional trauma he had suffered as a result of the breakdown of his marriage, that several important issues had to be agreed on including about his children, and that it was a lengthy and protracted process over several years. I said I recognised this would all have had a significant impact on Mr T.

However, I said Mr T was clearly thinking about how his pension was invested when he was having active discussions about its make-up with his adviser in early August 2022 – only a few days after the suspension started. I didn't think Mr T's ability to make decisions about his pension was likely to have been significantly different a few days earlier, or from May 2022 when he was told there would be a freeze on trading. Mr T's submissions for his complaint showed that ordinarily he was intellectually capable. Mr T had legal representation for the PSO, and also had regular contact with his IFA about his pension. Mr T had professional support and guidance. So I didn't think Aviva not specifically telling Mr T he could switch to

cash prevented him from doing so before the freeze came into effect.

I said Aviva had given Mr T advance notice of the suspension of trading in its e-mail dated 11 May 2022. Mr T had over 11 weeks before the suspension started to come to an agreement with his ex-wife. I thought it was a matter for Mr T and his ex-wife (and their representatives) to agree on whether to move to cash for the period between the suspension and the transfer being completed.

Mr T had, however, said assuming he could have come to an agreement with his ex-wife to move to cash wasn't reasonable or realistic. And that he had been advised by his lawyers not to place trades following the PSO. So I said in that case, I thought it followed that it was also unlikely that Mr T would have made changes prior to the completion of the transfer even if Aviva hadn't suspended trading.

I said I accepted that suspending trading was a fairly blunt instrument, and there were disadvantages to Mr T in doing so. And so that it could be argued that Aviva hadn't acted in Mr T's best interests. I said PSOs did create a fairly unusual position where two different individuals had their own interests in a plan, and where it wasn't uncommon for there to be animosity (sometimes deep-seated) between them, but only one of those individuals had control over the plan – at least for a period of time.

I said in the particular circumstances, I thought Aviva had to balance the - possibly competing - interests of Mr T and his ex-wife against the background of its own regulatory obligations. I said if Mr T traded it would ultimately have had an impact on what his ex-wife would receive – irrespective of ringfencing. So I didn't think it was unreasonable for Aviva to have a policy to protect the interests of the transferee – albeit I accepted this had a downside.

Taking all the above into account, I said I didn't think suspending trading – with appropriate notice given to Mr T so that he had an opportunity to mitigate investment risk – was unreasonable in all the circumstances, and in balancing those interests. But even if that wasn't the case I thought it unlikely that Mr T would have made changes to his investments in any event, prior to the completion of the transfer, even if Aviva hadn't suspended trading.

Mr T didn't agree with my provisional decision. He provided further evidence and arguments that I've taken into account in making my further provisional findings. As I've said above, my understanding of the circumstances has changed, in as far as when the implementation period started. This changes some of my reasoning and will therefore likely have an impact on what Mr T (and Aviva) may have to say. Both parties now have another opportunity to provide further evidence and arguments which I will consider before making my final decision.

What I've provisionally 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.

In doing so I've taken taking into account relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time.

Suspension of trading

In considering whether Aviva acted reasonably I'm bound to consider its actions in the context of all the circumstances. And in deciding whether Aviva failed to meet its obligations to Mr T I think the PSO is of central importance.

I'm satisfied that when Aviva was informed that the PSO had come into effect it was reasonable for it to have regard to Mr T's ex-wife's position and preserve the fund's assets. Once the PSO was made, Aviva had more than just Mr T's interests to consider; it was bound to comply with the court's order (which was for the benefit of Mr T's ex-wife). And it was entitled to have regard to its own potential liabilities and exposures from so doing.

Given that the legislation expressly involves the recognition of pension assets on a date, the transfer date, but that there might be some time before the assets were valued and transferred, it seems reasonable for the assets to be preserved in the interim. If the assets were lost, substituted or depleted that could lead to problems between all the parties involved.

Once Aviva was alerted to the PSO it was obliged to apply the legislation and act in accordance with the court's order, so that the pension credit could be properly established and transferred. Aviva had given appropriate notice to Mr T of the suspension giving him the opportunity to de-risk his pension if he was worried about the potential impact of being unable to trade during the suspension or ask for different arrangements. Mr T has said it wasn't reasonable to have expected him to switch to cash prior to the suspension which I will return to later in this decision.

However in my opinion, the suspension of trading, with Mr T given appropriate prior notice, was a reasonable and proportionate measure to ensure Aviva complied with the PSO, took into account Mr T's ex-wife's position and without exposing itself to avoidable liability.

Valuation Day

Mr T said he thought there was nothing in the legislation that precluded the transfer day and valuation day being the same date. He said:

On a plain construction of the legislation and section 29 of the Act the implementation period starts from 26 July 2022 and therefore Aviva should have selected that date and notified the parties accordingly, and by Aviva's own process they chose 25/26 July 2022 to calculate my ex-wife's 32% share.

As I've said, Aviva was required to process the PSO in accordance with the relevant legislation – the Welfare Reform and Pensions Act 1999 and supplementary regulations.

Section 29 part 7 of the Act provided:

7) For the purposes of this section, the valuation day is such day within the implementation period….

And part 8 defined "transfer day" as the day on which the relevant order or provision took effect.

I don't think it's in dispute the transfer day was 26 July 2022. And Section 34 of the Act provides details about the implementation period. Part 1 says the implementation period is the period of four months beginning with the later of the day on which the relevant order or provision takes effect, and the first day on which the person responsible for the pension arrangement to which the relevant order or provision relates is in receipt of:

(i) the relevant ... documents, and

(ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations.

The 'regulations' referred to include The Pensions on Divorce etc. (Provision of Information) Regulations 2000. These set out the information required by the person responsible for the pension arrangement before the implementation period begins. Aviva hadn't got all the information as provided for in these regulations on 26 July 2022, and so the implementation period hadn't started. The valuation day has to be within the implementation period in accordance with Section 29 part 7. So I don't agree Aviva could have used 26 July 2022 as the valuation day.

Implementation Period

I'd previously understood the implementation period had started sometime around 29 September 2022. This was when Aviva had all the information necessary to carry out the PSO. It was on this basis that I'd found that the concept of 'ringfencing' wouldn't work, in as far as any trading before this valuation day would have had an impact on Mr T's ex-wife's share of the pension. And so given the funds were disinvested and transferred shortly after this date, in practical terms, any changes after 29 September 2022 were unlikely to have made a material difference to Mr T's position.

However I asked Aviva when it considered the implementation period started. And it said it started on 14 August 2022 – when it received the pre-implementation form from Mr T's ex-wife. I'm satisfied this is consistent with The Pensions on Divorce etc. (Provision of Information) Regulations 2000 Regulations as it had received the information as set out in those regulations.

So I accept that 14 August 2022 (or a date after this, but within the implementation period) was a date Aviva *could* have selected for the valuation day. And so even if Aviva couldn't use 26 July 2022 as proposed by Mr T, I recognise it could instead have used 14 August 2022 (or sometime soon after and in the implementation period) – and 'ringfenced' as suggested by Mr T at that point.

Ringfencing

As I've said, Section 29 (7) provided for the scheme administrator to specify a valuation day within the implementation period. So I think the starting point is that, in law, a discretion is given to the administrator to name any day within the implementation period. Aviva used 29 September 2022. This was within the implementation period and consistent with the legislation.

Mr T considers the Regulator's Principles, Rules and Guidance and in particular its obligations to vulnerable customers which he has outlined in detail, meant Aviva was obliged to use an earlier valuation day. And ringfence the pension, allowing him to trade without affecting what his ex-wife would receive.

As I've said, I'm required to take, amongst other things, both relevant law and regulations, and the regulator's rules and guidance into account. I think the fact that the legislation allows the administrator discretion is important in deciding what is fair and reasonable. 'The Act' and its supplementary regulations embody a careful balance between the needs and interests of the various parties involved in a PSO, insofar as it contains detailed and specific provisions about timings for the implementation period, any potential extension and/or suspension.

The legislation was specifically drafted for the situation where pensions were being shared on divorce. So it seems the fact that the transferor and transferee were divorcing and, therefore, potentially subject to the financial and emotional stresses associated with it is unlikely to have escaped the Legislature's notice. I think that the measure of vulnerability that the parties might suffer as a result of divorce was likely a matter which was taken into account within the balance struck when the legislation was drafted.

In drafting, the legislation would have been subject to careful thought and scrutiny. The legislation's only requirement as regards the timing of the valuation day is that it occurs during the implementation period. That is the same as the required period during which the pension firm must discharge its liability to the transferee. So, a clear discretion is given to the firm as to the relationship between the two events. If Parliament had thought it right to impose a requirement that pension firms value as soon as possible or at a specific date within that period, it could have legislated accordingly.

There is nothing in the legislation that requires ringfencing. The greater the gap between valuation day and transfer the more potential that the PSO might be varied by the Court during the implementation period (see s.34(4)(c) and Reg 4 of the Implementation Regulations). That could mean the amount to be transferred might no longer correspond to the portion that had been set aside for the transferee on ringfencing. This could leave the pension administrator out of pocket if it was obliged to transfer a credit of greater value than the assets ringfenced for transfer.

Reducing the gap to the minimum means the amount of the credit paid away reduces the room for disputes with the transferee if the assets appreciate after valuation and before the transfer and/or about unjustified delays after valuation in making the transfer. I think valuing closer to when the credit is going to be transferred seems justifiable.

The PSO legislation was designed to provide a procedure and timetable to enable timely and efficient transfers of pension credits. No ringfencing or similar facilities was provided for in the legislation to allow pension assets to be dealt with by beneficiaries during implementation in the way Mr T argues for. Such modifications (had they been included) would have added to the complexity of the rules, the costs to firms and divorcing couples of implementing them, and potentially the chances of things going wrong.

So there appears to be good reasons for the assets identified at transfer day and subject to sharing to be preserved pending transfer, rather than divided at outset.

I've carefully considered all the evidence and arguments. In particular with regards to Aviva's regulatory obligations under PRIN and COBS, and the guidance surrounding the fair treatment of customers and vulnerable customers. I have taken these into account. However I also have to take them into account in the context of all the circumstances, including the relevant law – a law here that was designed to deal specifically with the sharing of pensions on divorce.

Having done so, I haven't seen anything in the particular circumstances to suggest that it was unfair or unreasonable for Aviva to process the PSO in the normal way, and in accordance with the relevant legislation. I'm not persuaded Aviva was obliged to make and provide its own arrangements for ringfencing which the legislation didn't require.

<u>Switching to cash</u>

Mr T said he was a customer in a vulnerable position having suffered the trauma of a complex and protracted divorce and financial settlement, and the loss of a significant portion of his wealth. He said I'd failed to appreciate or empathise with the reality of the situation. Mr T also said he didn't understand the relevance of my reference to Aviva not specifically telling him he could switch to cash, as he had never argued it had an obligation to advise him of his investment options.

Firstly, I'm sorry if my decision came across as lacking understanding and empathy for Mr T's situation and the circumstances of his divorce. As I said in my provisional decision, I recognise it will have had a significant impact on Mr T, and I don't wish to underestimate the difficulties and sensitivities of that situation and the protracted nature of it.

My point in relation to switching to cash was in relation to Mr T previously saying Aviva had never offered this – which I'd understood to mean that as Aviva hadn't specifically alerted him to it, that he wasn't aware of it being an option.

Mr T said it was unreasonable and unrealistic to expect him to reach an agreement with his ex-wife over a change to the asset allocation of the pension in a few short weeks (regardless of whether they had legal representation). He said his lawyers had advised him not to do anything that could affect the value of his ex-wife's share of the pension, the divorce was costly, and the last thing he wanted or could afford to do was to incur further legal expenditure.

Mr T also said he didn't understand my finding that because he had been advised by his lawyers not to place trades following the PSO, it was unlikely that he would have made changes prior to the completion of the transfer. He said this was at odds with the contemporaneous evidence provided; the e-mails with his lawyers on 16/26 May 2022 where he asked if he could switch out of some underperforming funds; discussions with his adviser on 4 August 2022; the e-mail he sent to Aviva on 8 August 2022 saying that he was anxious to make switches, and the fact he actually made switches as soon as the trading suspension was lifted in October 2022.

Aviva had given Mr T advance notice of the future suspension of trading in its e-mail dated 11 May 2022. And this was several weeks before the PSO came into effect on 26 July 2022. Mr T e-mailed his lawyers on 16 May 2022 saying his financial adviser was wanting to switch some underperforming funds, and asked *"Am I precluded from doing this at the moment given the order has/is about to be granted?"*. This shows Mr T was thinking of making changes several weeks prior to the PSO coming into effect. But that he was mindful of the legal position on doing so. Aviva's suspension hadn't started, and so Mr T had the opportunity to make changes at that time (subject to the legal advice), including switching to cash, but didn't.

When Aviva e-mailed Mr T on 8 August 2022 saying it had received the PSO and confirming the suspension of trading had started, Mr T asked a series of questions about the PSO process and timescales. He said he was asking as he was keen to make some switches to his pension. Aviva responded to say its usual timescale was four months, but it would seek to implement it sooner. Mr T asked further questions about the process, in particular whether he would bear the full risk of any increases or decreases in the value of his fund from 26 July 2022. He also asked if the process could be expedited.

I don't think Aviva's response was clear. In my opinion it gave the impression that the assets were split between Mr T and his ex-wife as at 26 July 2022. And it advised Mr T to contact his IFA in relation to whether he would bear the risks from that date.

On the one hand, I don't think Aviva provided clear information to Mr T as it was obliged to do under the FCA's Principle 7 – to communicate information to its customers in a clear, fair and not misleading way. I don't know whether Mr T asked his IFA and so was aware that any increases/decreases would affect both him and his ex-wife until valuation day. However I don't think the misinformation or lack of clarity in it caused Mr T any losses. He was already in the period of suspension – so couldn't make changes anyway. And as I've said, I think the suspension was reasonable and proportionate in the context of notice being given and Aviva's obligations regarding the PSO. I don't think Aviva was obliged to amend its normal policy to suspend in the particular circumstances.

However I accept the exchange again shows that Mr T was keen to make changes to his underlying investments. I outlined above the contemporaneous evidence showing Mr T and his adviser had discussed potential changes to his funds both during the period of suspension and prior to it. And as I noted, Mr T did make changes to his funds shortly after the suspension was lifted.

However the discussions (post suspension) and Mr T's intentions were against the background that Mr T was aware that he couldn't trade at that point – they were about potential changes. And the changes made were after Mr T's ex-wife's share had been transferred (obviously as Mr T couldn't make changes prior due to the suspension).

Mr T has said that his pension fell in value by about 6.7% over two months whilst he wasn't able to trade. However that fall is only seen with the benefit of hindsight. Some of the funds Mr T was considering switching from due to poor performance had seen significant falls in value over several months prior to suspension. The falls during and prior to the suspension were incremental. At any particular point in time an investor doesn't know whether a fund is going to continue to fall in value, or at what point it recovers.

I've noted previously that Mr T's ISA was invested in the same way as his pension. And that Mr T didn't make changes to it despite trading not being suspended on it. Mr T said it wasn't relevant to compare the two separate products. He said the ISA was only valued at just over £50,000, compared to the pension at over £940,000. And that he was naturally focused on the significantly higher valued pension, and losing 7% from the ISA wasn't the same as losing 7% from the pension.

I agree with Mr T that as the pension was significantly higher value the fact he didn't switch some of the investments in the ISA didn't necessarily mean, in itself, that he wouldn't have switched them in the pension. However I do think it has some relevance, albeit given appropriate weight.

Obviously, as a matter of general principle, investors don't want to lose money. So if an investor has strong opinions that a fund is likely to lose value, I think they are likely to take steps to switch out of it. As I've said above, at any particular point in time Mr T wouldn't have known how that fund(s) were going to perform going forward, or the extent of any losses or gains. Mr T said he was considering using some of his ISA to help fund a property purchase. So I don't think he would have wanted to suffer any significant short-term falls in the value of the ISA in any event. So I do think Mr T not switching out of certain funds in the ISA was indicative of him not considering it imperative that he switched out of certain funds as soon as possible and in all circumstances.

I think that is relevant, in so far as, as I've said, Mr T appears to have been mindful of the legal position. He didn't switch funds prior to the suspension and after the legal advice he'd been given in May 2022 but before the PSO took legal effect– even though he'd considering making changes with the IFA. Mr T has said it was unreasonable to have expected him to switch to cash prior to the suspension.

Firstly, whilst I recognise the difficulties in their relationship as Mr T has pointed out, I don't think it was unreasonable to expect Mr T to agree to such an arrangement with his ex-wife and through their legal representatives. Switching to cash would have protected both of their positions during the process of the transfer of credit, it was in both of their interests given the risks of not doing so and unlikely to be controversial.

However if I am wrong about that, then I can't see that Mr T's position changed in relation to his relationship with his wife and the legal advice in place (not to make changes that would affect the value of his ex-wife's share) after the suspension had started. The same factors were in play, and, as I said, the PSO had legally come into effect at this point. Switching – without the benefit of ringfencing – would have had an impact on the value of his wife's share of the pension. And so I think the reasons that Mr T says it was unreasonable for him to switch to cash prior to the suspension still applied.

So I think taking all the above into account, I'm not persuaded that Mr T would likely have made switches (without ringfencing) even if the suspension hadn't been in place. But then, in the alternative, if I am wrong about that and he would have, I think it also follows that it wasn't unreasonable to have expected him to switch to cash to de-risk his pension prior to the suspension.

Mr T didn't agree with my finding that it wasn't unreasonable for Aviva to have a policy in place that protected the interest of his ex-wife. He said he was Aviva's existing customer, and if anything the balance of Aviva's policy should have protected him. Mr T said there was a circa nine-week delay on the part of his ex-wife and her pension provider to complete the transfer – during which he couldn't trade his share of the pension. He said it was unfair that he had to bear the consequences.

For the reasons I explained earlier, once the PSO was made Aviva had more than just Mr T's interests to consider, and in my opinion it was reasonable for Aviva to have regard to Mr T's ex-wife's position, have regard to its own potential liabilities and exposures and preserve the fund's assets and comply with the PSO. Aviva was obliged to carry out the PSO, and ultimately, if one of the parties wasn't co-operating and preventing Aviva from carrying out the PSO the matter could be referred back to the court.

Mr T said he didn't understand my comment in the provisional decision that calculating his ex-wife's share at 25/26 July was consistent with Aviva's process of suspending trading at that point. Aviva had said it calculated Mr T's ex-wife's share as at 25/26 July 2022. The number of units wouldn't then be materially impacted by valuation day (given the suspension of trading - albeit there would still be charges). All this is consistent with its records. What I meant was that I didn't think it necessarily needed to identify the relative shares in units at 25/26 July – because at that date it had to determine the 'relevant benefits' - which were all of Mr T's shareable rights. So whilst Aviva did identify the relative shares at 25/26 July 2022, I don't think it needed to, because the specified percentage wasn't applied to the 'relevant benefits' until valuation day to determine the appropriate amount.

Mr T has questioned what I said in my provisional decision – that in the circumstances only one of the individuals had control over the plan. I accept that Mr T wasn't able to trade during the period of suspension, but obviously that was because of the actions taken by Aviva. Whilst I appreciate the legal advice he was given prior to the suspension, Aviva itself didn't prevent him trading prior to the PSO coming into effect. So there was potential (and would have been potential but for the suspension) for Mr T to make changes, whereas his ex-wife had no control over the pension.

I realise Mr T will be disappointed with my further provisional findings. However taking all the

above into account and for the reasons outlined, I don't think Aviva treated Mr T unfairly. Or that the suspension caused the losses that Mr T has claimed.

My provisional decision

My provisional decision is that I don't uphold Mr T's complaint.

Responses to provisional decision.

Mr T didn't agree with my provisional findings. He referred, in particular, to my findings relating to 'ringfencing' and switching to cash.

Ringfencing

In summary, Mr T said that I had accepted that Aviva could have used 14 August 2022 as the valuation date. And the value of his share of the pension was considerably more at that date than the actual valuation date adopted by Aviva. Mr T said he thought the only fair way to balance the needs and interests of the various parties involved in the PSO was for Aviva to adopt 14 August 2022 as the valuation day and then apply 'ringfencing' as previously set out from that date. He said this would have protected his ex-wife's share of the pension and left his share unfrozen, enabling him to trade and take steps to protect the value of his pension. He said by failing to do so Aviva unduly prejudiced its customer and failed to balance the interests of all parties which it was required to do.

Mr T said I'd failed to take into account that the legislation was drafted in 1999, which was before the concepts of treating customers fairly and achieving good outcomes for vulnerable customers had developed in the regulatory sense. He said it followed, and that it wasn't a surprise, that the legislation didn't have ringfencing in mind when it was drafted. And that it was reasonable to infer that the regulator interpreting the legislation would now expect Aviva to provide a product offering ringfencing to meet the needs of both parties.

Mr T said I hadn't addressed the guidance in the FCA's published report dated 7 March 2025 entitled "Delivering good outcomes for customers in vulnerable circumstances - good practice and areas for improvement". He said this reinforced the FCA's position in relation to the obligations of firms in relation to the products they designed and their impact on vulnerable customers. It included that:

"….firms must make sure the design of products:

• Meets the needs, characteristics and objectives of the target market.
• Does not adversely affect groups of customers in their target market, including groups of customers with characteristics of vulnerability.
• Avoids causing foreseeable harm in their target market.

Under the guidance, firms should take customers in vulnerable circumstances into account at all stages of the product and service design process, to ensure products and services meet their needs. This includes:

• idea generation
• development

• testing
• launch
• review

Firms should use their understanding of vulnerability within their target market and customer base to support their product and service design process, considering the potential positive and negative impacts of a product or service on customers in vulnerable circumstances.

Firms should design products and services to avoid potential harmful impacts, as well as making sure products and services meet the needs of customers in vulnerable circumstances."

Mr T said this and other regulatory guidance post 1999 made it clear that the FCA would expect Aviva to have offered a pension product that included ringfencing to protect the position of the parties involved.

Switching to cash

Mr T didn't agree with my conclusion that it was reasonable to have expected him to come to an agreement with his ex-wife to switch to cash during the period 11 May to 26 July 2022. He said the divorce was lengthy and acrimonious (lasting over three years) and each financial decision was heavily litigated and contested. Mr T provided details about the numerous issues involved and details of his and his ex-wife's priorities after the conclusion of the consent order on 11 May 2022, including those relating to his son's ill health and various medical and school appointments.

Mr T said the legal fees had been significant throughout the divorce proceedings and the last thing he and his ex-wife had on their minds was to incur further legal fees. He said he and his ex-wife's lawyers were matrimonial lawyers who weren't qualified to provide advice on complex pension matters and whether to switch a portfolio of shares to cash. Therefore they would have needed to instruct new lawyers who were experts in the field, as well as seek professional advice from a qualified IFA – something his ex-wife didn't have at the time. Mr T said it was unrealistic to have expected him to reach an agreement with his ex-wife in such a short timeframe.

In summarising Mr T said he thought I was wrong to find that Aviva was under no obligation to provide ringfencing. He thought the regulator would have expected Aviva to offer it given its obligations, and in particular to vulnerable customers. And given the particular circumstances as he'd described, Mr T didn't think it was reasonable to conclude that he should have switched to cash prior to the suspension of trading.

Aviva didn't provide any further evidence or arguments to consider.

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've seen no reason to depart from my provisional decision not to uphold Mr T's complaint.

In my provisional decision I explained that in considering the matter I thought the PSO was of central importance. Once Aviva had been alerted to the PSO it was obliged to apply the legislation and act in accordance with the court's order.

I recognise that the legislation was drafted in 1999, and I accept that there is now more focus on vulnerability and the FCA's requirements for firms to treat vulnerable consumers fairly has since developed including requirements, as Mr T has said, in relation to product design. Whilst I am clearly bound to take, amongst other things, the FCA's rules and

guidance into account, I've considered them in the context of all the circumstances and here, in particular the context of the relevant law.

As I said, the legislation was targeted and drafted for a specific purpose - the situation where pensions were being shared on divorce. 'The Act' and its supplementary regulations embodied a careful balance between the needs and interests of the various parties involved in a PSO. It applied to a range of pensions and in differing circumstances, and as I said, the fact the parties were divorcing and the wider associated financial and emotional stresses would likely have been taken into account within the balance struck when the legislation was drafted.

I don't think the legal risks of making changes to a pension after a PSO has been made and prior to implementation, particularly where invested in risk-based assets, would only have become clearer over time and as awareness of the risks linked with vulnerability have evolved. I don't think it's an issue that arises exclusively from a consumer being vulnerable – it would be an issue in any event. I think it would have been evident at the time the legislation was drafted and, more widely, the legislation took into account the possibly competing interests of the parties and, although not expressed in those terms at the time, their potential vulnerability. So I don't think the FCA's requirements around vulnerability would have, separately, required Aviva to do more than was already required of it in the legislation.

As I said, if Parliament had thought it right to impose a requirement that pension firms value as soon as possible or at a specific date within that period, it could have legislated accordingly. And it could have provided for 'ringfencing' – but didn't. By finding that Aviva should use a particular valuation day I would be taking away the discretion that Aviva was given in law. For the reasons I set out in my provisional decision, there appears to be good reasons for the assets identified at transfer day and subject to sharing to be preserved pending transfer, rather than divided at outset. And taking all the above into account, I don't think the valuation day selected by Aviva was inappropriate or unfair in all the circumstances.

I've carefully considered Mr T's evidence and arguments on the matter. However taking everything into account, I don't think it would be appropriate for me to impose a different requirement on Aviva to that provided in law – a law specifically drafted to deal with a PSO and its associated issues. As I said, I haven't seen anything in the particular circumstances to suggest that it was unfair or unreasonable for Aviva to process the PSO in the normal way, and in accordance with the relevant legislation. And I'm not persuaded Aviva was obliged to make and provide its own arrangements for ringfencing.

Mr T didn't agree with my conclusion that it was reasonable to have expected him to come to an agreement with his ex-wife to switch to cash prior to the suspension of trading. Firstly, as I've previously said, I appreciate that the divorce proceedings will have had a significant impact on Mr T. I can see that he also had other important and stressful matters to deal with, and I don't wish to underplay their impact and recognise that Mr T had a lot to deal with at the time.

However the reasons I've given, I think the suspension of trading, with Mr T given appropriate prior notice, was a reasonable and proportionate measure in all the circumstances. PSOs aren't straightforward. There are a number of issues to consider, and complexities can arise. The wider legal risks of Mr T making changes to the pension after the PSO was made and during implementation (irrespective of the suspension) were always there. I note what Mr T has said about the particular expertise of his lawyers, but that wasn't something Aviva was responsible for.

Mr T was alerted to Aviva's intention to suspend trading 11 weeks before the suspension came into effect. I don't think it's likely a decision to switch to cash would have been controversial – it protected both Mr T and his ex-wife's position. It wasn't a matter of making any adjustments to the settlement that favoured Mr T. So I don't think it's possible to definitively say that Mr T's ex-wife/her lawyers wouldn't have agreed to a switch in time where it would have protected her own position.

But then I think, even if I am wrong about Mr T being able to agree a switch given his particularly difficult relationship with his ex-wife and circumstances - and clearly I appreciate Mr T knows his relationship with his ex-wife better than I do - that wasn't something that Aviva was responsible for. I think the notice that Mr T was given was ordinarily reasonable to allow him to agree any changes to the investments in the circumstances, and he didn't ask for an alternative on first being alerted to the suspension. I don't think Aviva acted unreasonably in respect of the amount of notice given.

Mr T said he didn't understand the reasoning in my provisional decision that I didn't think he would likely have switched investments even if Aviva hadn't suspended trading. He said he thought I had missed the critical point – that ringfencing would have allowed him to trade without affecting his ex-wife's share of the pension. I was aware of the point that Mr T was making - as I said in my provisional decision, 'Switching – without the benefit of ringfencing – would have had an impact on the value of his wife's share of the pension' and 'I'm not persuaded that Mr T would likely have made switches (without ringfencing) even if the suspension hadn't been in place'. For the reasons I've given, I'm not persuaded Aviva was obliged to provide such a facility. And the reasons why I didn't think Mr T would likely have traded even without the suspension were on that basis - that there wasn't any 'ringfencing'.

I've carefully considered the arguments and evidence that Mr T has presented over the course of the complaint. However having done so, and taking everything into account, I've not been persuaded that Aviva acted unfairly, or caused the losses claimed in the particular circumstances.

My final decision

My final decision is that I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 13 November 2025.

David Ashley
Ombudsman