Financial Ombudsman Service

complaint

Mrs C's complaint concerns the delays caused by Aviva Life & Pensions UK Limited ("Aviva") when transferring her pension fund to another pension scheme. She has said that these delays caused her financial loss.

Mrs C has also complained that her funds have been mis-managed due to the disappointing returns and that the plan was mis-sold because the projected returns will not be achieved.

background

Mrs C had held a pension plan with Aviva Life & Pensions UK Limited for several years. The contributions were invested partly in the with-profits fund and in two other stockmarket funds. This plan was written under the law of her residence which was not within the UK.

The timeline of events leading up to the complaint are as follows:

Friday, 7 June 2013 -	Mrs C telephoned Aviva for the transfer value of her plan. She was given the figure. At the same time she asked for the transfer paperwork to be sent to her.
Monday, 10 June 2013 -	Aviva sent out the transfer paperwork which showed a lower transfer value than previously quoted.
Thursday, 20 June 2013 -	Mrs C received the transfer paperwork.
Monday, 24 June 2013 -	Aviva called Mrs C in response to her request for clarification of the lower transfer value.
Wednesday, 26 June 2013 -	Mrs C spoke with Aviva and was given a different transfer value and she complained.
Monday, 8 July 2013 -	Mrs C signed the transfer form and returned this to Aviva.
Wednesday, 10 July 2013 -	Aviva received the transfer form and wrote to Mrs C on the same day asking for the receiving scheme's trust deed and rules.
Wednesday, 17 July 2013 -	Mrs C called Aviva and explained that the receiving scheme was not subject to a trust deed or rules and gave Aviva the pension company's registration number. On the same day, Aviva commenced internal verification procedures to confirm the proposed transfer would be valid.
Wednesday, 24 July 2013 -	Aviva agreed that the funds could be released.
Friday, 26 July 2013 -	Aviva transferred the pension funds to the receiving scheme using an encashment date of 11 July 2013. This value was higher than any other transfer value quoted beforehand.

Aviva wrote to Mrs C on 26 June 2013 rejecting her complaint saying that the transfer value was dependent upon market prices given that a proportion of her funds were invested in equity market related funds.

As Mrs C was not satisfied with this response and she referred the matter to this service for an independent assessment.

The case was investigated by one of our adjudicators who wrote to Mrs C saying that he was not able to uphold her case because:

- It would be useful if Aviva did accept other methods of communication for receiving documents in order to avoid postal delays which were outside the control of Aviva. While Mrs C had said that she returned the signed transfer form on 30 June 2013, this could not have been possible given that she signed it on 8 July 2013.
- There were no undue delays in releasing the funds on 26 July 2013 once the paperwork had been received on 10 July 2013 at which point further information was required.
- Mrs C would have been given point of sale literature which explained that the investment was not guaranteed and fluctuated according to market conditions.
- She was eligible at the time of advice to commence a pension plan.

In response, Mrs C said:

❖ She may have been inaccurate about the end of June date for returning the signed transfer form but had no way of checking this. The delays were only in part attributable to postal delays but the main reason for the delays was Aviva's request for the non existent trust deed.

❖ She did not telephone Aviva on 16 July as the adjudicator has said – she did not receive the trust deed request till the following day. She did not 'challenge' Aviva as the adjudicator has said. She called Aviva to explain that the receiving scheme was a self-managed pension company and as such was not subject to a trust deed asking why this was not mentioned in the transfer form and notes.

❖ Following this conversation, it was established that Aviva required the Certificate of Incorporation for the pension company. She provided the tax reference number and how Aviva could cross reference this. Aviva had then agreed to a fax copy of the required certificate.

❖ She had not been advised when the funds had been released. The adjudicator said that the turnaround timescale was not unreasonable. She disagreed as 7 June until 26 July was a long time in a volatile market.

❖ She held financial services qualifications and had asked Aviva to hold on to the transfer instructions until she provided a specific date. Aviva would not agree to this.

❖ Aviva should use email rather than post for communication purposes. Post is slower and unreliable. As an example, she quoted the adjudicator's use of email when the posted letter was not received. Her post was subject to regulation which required no more than one day's delay for incoming post from the UK.

- She was concerned about other investors who were not aware of stock market fluctuations. Aviva had not used best practice during this transfer process.

As the case could not be resolved, it has been passed to me for my consideration.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the adjudicator and for the same reasons.

The use of post as opposed to email to communicate with policyholders is a business decision for Aviva presumably taking account of the risks associated with electronic communications. I am unable to comment on postal delays as this is outside the control of both parties except to say that in my opinion it would be neither fair nor reasonable to hold Aviva to account for a third party service failure, for example by the Royal Mail.

Mrs C has said that the delays which occurred between 7 June and 26 July were the result of inadequate service by Aviva. Having carefully considered the timeline of events, I disagree. Mrs C telephoned Aviva for the transfer forms on Friday, 7 June 2013. Aviva sent these on the next working day which was Monday 10 June 2013.

Mrs C says that she received the transfer forms on 20 June 2013. I have no reason to doubt Mrs C's recollection but I have not been provided with persuasive evidence to show that Aviva were responsible for the delay between posting the forms and Mrs C receiving them.

Mrs C then called Aviva on 24 June 2013 about the lower transfer value and requesting clarification of how it had been calculated. Mrs C was provided with this clarification on 26 June 2013. I agree with the adjudicator that this was not an unreasonable turnaround time.

I note that on the Transfer Value letter sent to Mrs C of June 10 2013 it says '*The transfer value is not guaranteed and we will re-calculate it on receipt of all our requirements.'*

The signed paperwork was then returned to Aviva on 8 July 2013. I am not persuaded it could have been returned earlier as I note the signature date completed by Mrs C was also 8 July 2013. Aviva wrote to Mrs C on 10 July asking for the trust deed and rules of the pension scheme, the same day that Aviva received the signed paperwork from Mrs C.

I am not persuaded that Aviva should have known that the receiving scheme was a pension company and that the due diligence undertaken by Aviva was unnecessary. Aviva was required to check the validity of the receiving scheme; I am also not persuaded Aviva is reasonably required to have immediate knowledge of the governance and jurisdiction arrangements of all pension schemes, especially if the scheme in question is overseas.

In my opinion, Aviva reacted promptly once Mrs C provided the Certificate of Incorporation for the receiving scheme. I accept that there were further delays while Aviva conducted its due diligence checks but I am not persuaded by the evidence that these checks took an undue length of time or caused unreasonable delay or materially disadvantaged Mrs C.

That said, Aviva used the encashment date of 11 July which was the next working day after the transfer paperwork had been received. Aviva subsequently transferred the pension funds two days after its internal due diligence process had been completed. I am not persuaded that this was an undue delay.

Mrs C has acknowledged that she is financially aware and has experience of managing a pension company. She was aware that part of her fund was invested in the stock market. If she had concerns about the fluctuations of her pension fund value, she had the opportunity to protect this value by switching to cash. Whilst I understand that Mrs C is disappointed with the investment returns from her pension funds, the illustrations of potential fund values and income at retirement were not guaranteed.

Mrs C has also said that the various changing transfer values she was given by Aviva demonstrate that 'smoothing' was not being properly applied to her funds in order to reduce volatility. However, as both Aviva and the adjudicator explained, 'smoothing' only applies to Mrs C's investment in the with-profits fund; her remaining investments were in two funds subject to prevailing market values. Accordingly, the overall value of her investments would be materially influenced by daily market moves and would therefore be subject to volatility.

Mrs C has said that the delays have caused her lost opportunity for investment purposes. I have not been made aware of the investments that the receiving scheme made on her behalf. In that context and given that Mrs C received a higher value on completion of the transfer than the values quoted to her in early June, I am not persuaded that Mrs C has suffered a demonstrable financial loss.

my final decision

It would not be fair or reasonable to hold Aviva to account for the various aspects of Mrs C's complaint. I do not uphold this complaint.

Terry Connor
ombudsman