

Ombudsman's Determination

Applicant	Mr S
Scheme	Ad-Visor Services Ltd Pension Scheme (the Plan)
Respondents	Aviva Life and Pensions UK Limited (Aviva)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by Aviva.

Complaint summary

2. Mr S has raised the following complaints in relation to his benefits under the Plan:
 - Aviva repeatedly failed to answer his question regarding how he could take his benefits;
 - Aviva left him with no choice but to transfer his benefits to another provider, causing him to lose his enhanced tax-free lump sum; and
 - Aviva caused delays when he transferred his benefits out of the Plan.
3. Mr S says he has suffered a financial and non-financial loss as a result.

Background information, including submissions from the parties

4. Mr S was a trustee and sole member of the Plan, which was a small self-administered scheme (**SSAS**) provided by Aviva.
5. On 10 January 2018, Mr S telephoned Aviva with a number of queries regarding the Plan. In particular, he requested the value of his benefits and whether he could access them via drawdown. The representative confirmed that the benefits held under the Plan currently had a transfer value of £132,625.41. The representative said that drawdown was only an option on this type of policy where members were entitled to more than 25% as a tax-free lump sum. The representative said Mr S would have to complete an A-Day questionnaire which would be emailed to him to see if this option applied to him.

6. On 11 January 2018, Mr S telephoned Aviva to say he had not yet received an email. The representative confirmed that the email was due to be sent by 18 January 2018, but that Mr S would likely receive it sooner than that.
7. On 24 January 2018, Aviva telephoned Mr S following a request for it to do so the previous day. Mr S said he wanted to know if he had access to a drawdown facility under the Plan. The representative said that drawdown would only be available if he was entitled to an enhanced tax-free lump sum, which was still to be calculated. The representative said an A-Day questionnaire had been sent to Mr S, which he confirmed he had received. The representative confirmed an email address to which Mr S could send a scanned copy.
8. On 25 January 2018, Mr S telephoned Aviva for assistance to complete the A-Day questionnaire. Mr S again asked whether the Plan had a drawdown facility, and the representative confirmed that Aviva would need the completed A-Day questionnaire before they could discuss his options in full.
9. On 2 February 2018, Mr S telephoned Aviva for an update. He said that he had returned the A-Day questionnaire; the representative confirmed it had been received. The representative said that Mr S should hear by 13 February 2018 in regard to his available tax-free cash. Mr S asked if the representative could give him the figures straightaway, but the representative said they did not have these.
10. On 9 February 2018, Mr S telephoned Aviva to say that he had received a letter regarding his benefits following assessment of the A-Day questionnaire. However, he did not fully understand the letter setting out his options, as the benefits had only been calculated up to April 2006. The representative agreed that Mr S would need to be sent up to date figures. Mr S said that the letter indicated he had an enhanced tax-free lump sum, and the representative confirmed this was the case. The representative also confirmed that Mr S would be sent a further letter with updated figures and retirement options.
11. On 12 February 2018, Aviva sent Mr S his retirement options. The retirement pack confirmed that Mr S' benefits had a value of £115,725.50 and a transfer value of £127,240.42. It also confirmed Mr S' tax-free lump sum and included a form for Mr S to complete if he wanted quotes for the lifetime annuities Aviva could offer.
12. On 19 February 2018, Mr S wrote a letter of complaint to Aviva. He said he had telephoned it numerous times recently and often he had had to wait four minutes before his call was answered. He said that he understood he was entitled to an enhanced tax-free lump sum equating to 38% of his benefits. He asked whether he could take his enhanced tax-free lump sum and a fixed term annuity of five or six years. Mr S added that he had asked this question before, but Aviva had said it could not provide an answer until it had calculated his benefits. He said he had now received his retirement options, so he wanted the question answered.
13. On 21 February 2018, Aviva received Mr S' letter. A representative tried to telephone Mr S, but he did not answer. Aviva did not take any further action at this point.

14. On 5 March 2018, Mr S telephoned Aviva and asked whether he could take his enhanced tax-free lump sum and a fixed term annuity of five or six years. The representative said Aviva was not able to offer a fixed term annuity, and it only offered a lifetime annuity.
15. Mr S asked what would happen to his enhanced tax-free lump sum if he selected the Open Market option. The representative confirmed that under this option, Aviva would pay him the full amount of his enhanced tax-free lump sum. Aviva would then transfer any remaining benefits to another provider of Mr S' choice. The representative added that, once Mr S returned the selection form, he would be sent quotes for Aviva's lifetime annuities.
16. Mr S said that he wanted to take his enhanced tax-free lump sum, but with a fixed term annuity. The representative confirmed that he would need to select the Open Market option and find another provider who offered the fixed term annuity he wanted.
17. Mr S also mentioned that he did not want to use a drawdown facility, and he asked whether there were any other options he should consider. The representative said he would need to speak to an independent financial advisor (**IFA**) to discuss this. Mr S said he did not want to speak to an IFA.
18. On 7 March 2018, Mrs S wrote to Aviva on behalf of Mr S. Mrs S is Mr S' wife, a trustee of the Plan and the company secretary for the Plan's sponsoring employer.
19. Mrs S requested quotes from Aviva for the lifetime annuities it provided, as well as lifetime annuities from other providers. The evidence indicates that Aviva did not receive this letter.
20. On 9 March 2018, Aviva received a signed selection form from Mr S.
21. On 14 March 2018, Mr S says he asked his IFA to write to Aviva.
22. On 27 March 2018, Aviva received a signed letter of authority from Mr S, allowing his IFA to deal with Aviva on his behalf.
23. On 28 March 2018, Aviva received a transfer request from LV in relation to Mr S' benefits under the Plan.
24. On 4 April 2018, Aviva sent Mr S' paperwork to complete in order to progress his transfer.
25. On 18 April 2018, Aviva sent Mr S quotes for its lifetime annuity products.
26. On 24 April 2018, Aviva received transfer paperwork from Mr S.
27. On 26 April 2018, Mr S' IFA telephoned Aviva to ask what Mr S' transfer value would be. Aviva said it could not confirm that yet, but the transfer would be processed by 9 May 2018 if all the requirements had been met.

28. On 30 April 2018, Aviva wrote to Mrs S in her capacity as a trustee of the Plan. It asked her for proof of signature, as it believed her signature on the transfer forms did not match the signature it held for her.
29. On 1 and 2 May 2018, Mr S' IFA telephoned Aviva for an update. Aviva confirmed that it was still aiming to complete the transfer by 9 May 2018, if all the requirements were met.
30. On 4 May 2018, Aviva received proof of signature information from Mrs S. From this date, it had everything it need to progress the transfer.
31. On 10 May 2018, the transfer was made and £130,220.30 was paid to LV.
32. On 11 May 2018, Aviva wrote to the Plan trustees and LV, confirming that the transfer had been made. On the same day, Mr S emailed Aviva complaining about delays with his transfer.
33. On 14 May 2018, Aviva logged Mr S' complaint.
34. On 17 May 2018, Aviva received a telephone call from LV to confirm it had received the transfer funds. LV queried whether there was an Earmarking Order attached to the funds, and Aviva confirmed it would check.
35. On 17 and 18 May 2018, Mr and Mrs S emailed Aviva respectively. They complained that Aviva had led LV to believe that there may be an Earmarking Order on Mr S' benefits.
36. On 23 May 2018, Aviva confirmed to LV that there was no Earmarking Order attached to Mr S' transferred funds.
37. On 11 June 2018, Aviva wrote to Mr S and confirmed his complaint was being investigated.
38. On 10 July 2018, Aviva sent Mr S its final response to his complaint. Aviva said that:-
 - His transfer could not have been completed until all the requirements were met.
 - It did not receive all the paperwork required until 4 May 2018, and the transfer was made on 10 May 2018.
 - It had not received the IFA's letter dated 14 March 2018.
 - It had received Mr S' letter dated 19 February 2018, and it acknowledged that a response had not been provided.
39. In relation to the last point, by way of apology, Aviva enclosed a cheque for £100. It also confirmed how Mr S could escalate his complaint if he was not happy with the outcome of its investigation.
40. Mr S deposited the cheque for £100, but he did not accept the overall outcome.

41. On 3 and 31 August 2018, Mr S wrote to Aviva. He complained that:-

- Aviva had never answered his question regarding whether he could take an enhanced tax-free lump sum from the Plan with a fixed term annuity.
- Aviva had not responded to several of his other communications.
- Now he had transferred his benefits, he had lost his enhanced tax-free lump sum. He had suffered a financial loss, as he would now have to pay tax on an additional £11,300.

42. On 2 April 2020, Aviva acknowledged it had indicated to LV there may be an Earmarking Order attached to Mr S' benefits. In recognition of this further error, it offered to increase its compensation by £400, to £500 in total.

43. Mr S said he would consider the matter resolved if Aviva increased its offer to £1,000, but Aviva declined to do this.

Adjudicator's Opinion

44. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-

- Mr S complained that he was on hold for up to four minutes when he telephoned Aviva. However, this was a reasonable call waiting time for a large organisation, and it did not amount to maladministration.
- Aviva had informed Mr S, during the telephone call on 5 March 2018, that it did not offer fixed term annuities. It explained that he could find another provider who did, and transfer his benefits to it if he wished. Aviva also clearly confirmed that Mr S could take his enhanced tax free lump sum before he transferred his benefits away.
- Aviva progressed Mr S' transfer request promptly, and completed it within four working days of receiving all the paperwork it needed.
- Aviva incorrectly informed LV that there may be an Earmarking Order attached to his benefits. However, Aviva confirmed there was no Earmarking Order in place within four working days of the transfer, and Mr S had not demonstrated that he had suffered a loss from being unable to use his benefits during this time.
- Aviva had not received all of the correspondence, which Mr S complained it had not responded to.
- Aviva had failed to respond to some of Mr S' correspondence. However, its overall offer of £500 was sufficient to redress any distress and inconvenience this had caused.

45. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S has provided the following further comments:

- Aviva did not respond to his letter dated 19 February 2018.
- Aviva may have addressed his question regarding fixed term annuities during the telephone call on 5 March 2018. However, it must have provided him with conflicting information at a later date, or he would have taken the enhanced tax-free lump sum before transferring his benefits.
- Aviva ought to have put the information he was given during the telephone call on 5 March 2018 in writing.
- Aviva failed to respond to several of his communications.
- Aviva led LV to believe there was an Earmarking Order attached to his benefits under the Plan.
- He was often on hold for twenty minutes when he telephoned Aviva before he was able to speak with someone.

Ombudsman's decision

46. Mr S' further comments do not change the outcome, and several of his points do not provide any additional detail to what has previously been said; I agree with the Adjudicator's Opinion.
47. Aviva has acknowledged that it failed to reply to Mr S' letter dated 19 February 2018, in writing. However, Mr S telephoned Aviva on 5 March 2018 and, during this call, he was provided with the information he had requested.
48. It may have been preferable for Aviva to have confirmed in writing, everything it discussed with Mr S during the telephone call on 5 March 2018. However, Mr S did not request this, and there was no expectation set by Aviva that it would do so. I do not find that there was maladministration in this respect.
49. There is no evidence that Aviva provided Mr S with conflicting information following the telephone call on 5 March 2018, or indeed at any stage.
50. The evidence indicates that Mr S could have taken his enhanced tax-free lump sum before transferring the remainder of his benefits out of the Plan. The fact that he did not, is not the fault of Aviva.
51. The Plan was a SSAS, and Mr S also engaged the services of an IFA. Aviva provided clear information to Mr S and acted in accordance with his wishes at all times, so I find that it has acted appropriately.

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52. Lastly, Mr S has said he was often on hold for twenty minutes when he telephoned Aviva. While this would be unfortunate, I do not find that it amounts to maladministration.
53. Mr S should contact Aviva if he wishes to accept its offer of the additional £400. I do not uphold Mr S' complaint.

Anthony Arter

Pensions Ombudsman
17 May 2021