

Ombudsman's Determination

Applicant	Mr T
Scheme	Aviva New Generation Personal Pension Scheme (the Plan)
Respondents	Aviva Life and Pensions UK Limited (Aviva) Legal & General (L&G)

Outcome

1. Mr T's complaint against Aviva and L&G is partly upheld. To put matters right, Aviva and L&G shall pay Mr T £500 in equal shares for the significant distress and inconvenience caused to him.

Complaint summary

2. Mr T's complaint concerns alleged delays caused by Aviva and L&G in transferring his pension funds from Aviva to L&G, then back to Aviva, and finally to Just Retirement. Mr T says that he has suffered financial loss for which Aviva and L&G should compensate him.

Background information, including submissions from the parties

3. Mr T had two pension arrangements with Aviva: (1) Endeka Ceramics Ltd New Generation Pension Scheme, a form of group personal pension plan with a policy number starting with "F" (**the F policy**), and (2) a freestanding additional contribution account with a policy number starting with "P" (**the P policy**).
4. In August 2018, Mr T met with his financial advisers, Birchwood Investment Management Limited (**Birchwood**), to discuss his retirement income requirements. Later that month, Birchwood obtained an open market option (**OMO**) quotation from L&G, based on an annuity rate which was guaranteed until 2 October 2018. Under this quotation, a pension commencement lump sum (**PCLS**) would be paid by Aviva before it made a transfer to L&G. Mr T accepted L&G's quotation.
5. L&G's annuity rates were decreased following a review on 6 September 2018.

6. When L&G received Mr T's completed application form on 17 September 2018, it pointed out to Birchwood that the form requested immediate vesting (**IV**), not an OMO as had been quoted. Under IV, L&G would be responsible for paying the PCLS instead of Aviva. Birchwood clarified on 19 September 2018 that the PCLS should be paid by L&G via IV, and asked L&G to obtain a revised quotation from its underwriters.
7. Following further reviews, L&G's annuity rates were improved between 27 September and 26 October 2018.
8. On 27 September 2018, L&G received its underwriters' decision, and on the following day asked Aviva to send transfer payments in respect of both the F policy and the P policy.
9. Aviva's service standard for making transfers was five working days for the F policy and ten working days for the P policy.
10. On 1 October 2018, via the Origo transfer system, Aviva received L&G's transfer request for the P policy. Aviva sent the P policy transfer payment (£25,489) to L&G on 2 October 2018.
11. L&G also made a transfer request for the F policy, but it referred to an incorrect policy number. This error was corrected on 5 October 2018.
12. Aviva sent the F policy transfer payment (£38,302) to L&G on 9 October 2018. In a letter to Mr T, Aviva explained that the F policy transfer payment had been increased by about £20 for late payment.
13. L&G could not immediately match the money received to the relevant policy number, because the amount was larger than the amount that L&G had expected to receive. On 22 October 2018, following a manual investigation, L&G told Aviva that it was now able to match the money received with the F policy.
14. On 26 October 2018, L&G sent its final quotation to Birchwood. This applied an annuity rate of 5.24%, rather than 6.45% as had been quoted by L&G originally.
15. On 29 October 2018, Birchwood received the final quotation, and discussed it with Mr T. They agreed that, because L&G's revised terms were worse, Birchwood should ask Aviva if it could take all the money back, in order to reverse the transfers made. Aviva informed L&G of Birchwood's request.
16. On 31 October 2018, Birchwood complained to L&G that the annuity rate it was now offering had dropped by 7%, when the transfer values of both policies had dropped by only 0.7%. L&G said it would take up to eight weeks to respond to the complaint.
17. Birchwood then made several telephone calls to Aviva, to ask if it could take back the transfers from L&G. Aviva said it would expedite making its decision on the matter within three working days, instead of the usual six. Aviva said a complaint could be logged if the client lost out due to delays by Aviva.

18. On 1 November 2018 Aviva said that a request to reverse the transfer could be made by close of business on the next day. Mr T agreed that Birchwood should ask Aviva to take the transfer back if L&G could not resolve the complaint by 3pm on 2 November 2018.
19. On 2 November 2018, L&G told Birchwood that it would not be able to reach a decision on the complaint on that day. Birchwood then requested Aviva to contact L&G to get back both transfer payments. Aviva told Birchwood that the same policy options would apply if Mr T was transferred back to Aviva.
20. On 5 November 2018, Aviva asked L&G to return the two transfer payments. L&G said that it would be able to return the funds within the next three to five working days.
21. In a letter to Birchwood dated 7 November 2018, L&G replied to the complaint. L&G pointed out that transfer values fluctuated from time to time. It said it could not provide the same annuity rate if the quotation basis was changed or if funds were received after the guaranteed expiry date, as had happened in this case.
22. L&G also said the delay was caused by Aviva not specifying the F policy number when it sent the payment. The fund value quoted by Aviva had dropped from £48,183 to £47,844. The annual income payable by L&G would be £2,507; under its previous quotation it would have been £3,106. L&G confirmed that the annuity rate offered in its original quotation was 6.45% and the rate offered in its second quotation was 5.24%.
23. Birchwood then discussed with Mr T a proposal to transfer his funds to a different pension provider, Just Retirement, with a view to obtaining a larger annual income. On 9 November 2018, Birchwood received completed application forms for transfers to Just Retirement.
24. On 14 November 2018, Birchwood asked both Aviva and L&G for an update. Aviva confirmed that the transfer request for the P policy was in the Origo transfer system, and agreed to escalate the matter. L&G pointed out that it had not yet been asked by Aviva to return the funds for the F policy. Aviva confirmed that the money should be returned.
25. On 15 November 2018, Aviva received a request to make transfer payments in respect of both the F policy and the P policy to Just Retirement.
26. On 19 November 2018, Aviva received £38,302 from L&G for the F policy.
27. On 23 November 2018, Aviva's suspense account received £25,489 from L&G, which L&G had paid on 21 November 2018. This amount represented the funds for the P policy, but Aviva was unable to match it to the correct policy until 29 November 2018. The following day Aviva confirmed that it had received the funds for the P policy. The original pension arrangement was reinstated as if no transfer out had been made.

This meant there was a fund reduction of £1,879, due to stock market changes since the original transfer date.

28. On 6 December 2018, Aviva paid £23,633 to Just Retirement. This represented the current market value of the P policy.
29. Aviva also attempted to make a transfer payment to Just Retirement in respect of the F policy, as had been requested. Just Retirement stated the wrong bank account number, so Aviva had to ask Just Retirement to correct it. A payment of £38,302 in respect of the F policy was made by Aviva to Just Retirement on 10 December 2018.
30. On 7 January 2019, Just Retirement clarified that the annual income it would pay was £2,668. That was £286 less than quoted on 7 November 2018. Mr T was unhappy with this figure, but he decided to go ahead with a transfer to Just Retirement.
31. On 14 January 2019, a rerun of the OMO quotation showed that Just Retirement was offering a higher annuity rate than in the terms issued to Mr T. It was agreed that an actuary should review the matter because some medical information about Mr T had been omitted.
32. On 17 January 2019, Just Retirement offered improved terms: Mr T's annual income would be £2,869 after taking a PCLS of £15,489. Mr T accepted these terms and received monthly payments.
33. On 14 February 2019, Birchwood made a formal complaint to L&G that it had not sent a revised quotation on 19 September 2018. Birchwood said that if it had been received then, Birchwood would have stopped the proposed transfer from Aviva to L&G.
34. On 18 February 2019, Birchwood made a formal complaint to Aviva, regarding its delays in transferring funds and confirming correct policy numbers.
35. On 20 February 2019, Aviva acknowledged Mr T's complaint. Aviva said that as two different types of policy were involved, two of its departments would need to respond.
36. On 22 February 2019, Birchwood confirmed to L&G that the complaint against it included the reduction in the P policy value (£1,879) due to the time spent out of the market while waiting for the money to be transferred.
37. On 15 March 2019, L&G rejected Mr T's complaint. L&G said that in September 2018 Birchwood had asked for a revised quotation to be reviewed by L&G's underwriters. The quotation could not be issued to Birchwood until the underwriters' review had been completed. The final quotation had been issued on 26 October 2018, after L&G had received the underwriters' response and had received the transfer payments from Aviva.
38. On 9 April 2019, Birchwood sent L&G's final response letter to Mr T. This said the transfer from Aviva had been reversed because L&G's guarantee period was only

open for a short time and Aviva sent the funds across too late. That was because of an incorrect policy number.

39. On 11 April 2019, Just Retirement confirmed that the annuity was the same amount as previously quoted.
40. On 15 April 2019, Birchwood sent Aviva's final response letter to Mr T. Aviva said that the transfers to L&G were completed within a reasonable timeframe. Aviva admitted that it had been responsible for a delay from 23 to 29 November 2018, after it had received the money back. Aviva said it would send Mr T £50 compensation, which in its view exceeded the financial loss incurred and interest for late payment. Mr T cashed the cheque he received.
41. In his subsequent complaint to the Pension Ombudsman's Office (**TPO's Office**), Mr T blamed both Aviva and L&G for causing him financial loss. He said that his loss was over £500 for unpaid pension between October and December 2018, over £500 for receiving a lower PCLS and £236 per annum for the difference in his future pension (the difference between L&G's quotation and Just Retirement's quotation).
42. In its response to TPO's Office, Aviva provided its complaints file, relevant correspondence and recordings of several telephone calls from Birchwood. Aviva said that it was not responsible for any of the delays in making the transfers to L&G, which were caused by L&G alone, and that it had already compensated Mr T for the delay it caused between 23 and 29 November 2018.
43. In its response to TPO's Office, L&G concluded that its actions did not contribute to any financial detriment suffered by Mr T. L&G said it acted on Mr T's financial adviser's instructions. The requested change from OMO to IV meant that L&G's original quote was no longer valid. L&G said it would expect a financial adviser to understand that in those circumstances a requote was needed, and indeed the financial adviser asked L&G's underwriters to review the matter. So he would have been aware a requote was being undertaken.
44. L&G also said the subsequent overall decrease in its annuity rates and deterioration in market conditions were unfortunate, but L&G did not believe it could have done anything to change the outcome. Whenever information provided by Mr T's financial adviser or Aviva was incorrect or missing, L&G had taken action to remedy this. It had not caused any unnecessary delays.

Adjudicator's Opinion

45. Mr T's complaint was considered by one of our Adjudicators who concluded that further action was required by Aviva and L&G. The Adjudicator's findings are summarised below:-

- In general, a transfer payment request will take time to process and creates work for several parties, so it is unfortunate that three transfers had to be made in respect of Mr T's two Aviva policies.
- Mr T originally wanted to transfer from Aviva to L&G, but he decided to reverse that transfer because the deadline for L&G's enhanced annuity rate had expired. Mr T says he could have requested Aviva to transfer his funds directly to Just Retirement, without first involving L&G, had he known the problems that would arise later.
- In determining whether Mr T had suffered any financial loss regarding his transfer from Aviva to Just Retirement, it would not be appropriate to take into account the quotations he received from L&G. This was because it was Mr T's decision to reverse those transfers so that he was in the same position as if no transfers to L&G had ever been made.
- It was unfortunate that Birchwood initially asked L&G for an OMO quotation, as it was decided later that IV should apply instead. The need for a revised, underwritten quotation clearly took some time, but this was not the fault of either Aviva or L&G.
- The first two transfers were made by Aviva on 2 October 2018, in respect of the P policy and on 9 October 2018, in respect of the F policy. Both transfers were completed within Aviva's service standard, as the transfer requests for the P policy and the F policy had been received on 1 and 5 October 2018 respectively. The Adjudicator considered that Aviva should not be held responsible for making the transfer payments after L&G's guarantee period had expired.
- However, there were several subsequent periods of delay that the Adjudicator considered were attributable to acts or omissions by Aviva or L&G:-
 - Firstly, after Aviva transferred the F policy funds to L&G on 9 October 2018, L&G had been unable to match the money to the correct policy until 22 October 2018 and had been unable to issue its final quotation until four days later. The delay in October 2018 could have been avoided if Aviva had made clear to L&G that a late payment addition was being made, and if L&G had acted sooner to identify the funds it had received. L&G had, however, pointed out that this delay did not have a negative effect on its annuity rate, which improved by 11 October 2018.
 - Secondly, there had been a delay in L&G returning the funds to Aviva between 5 November 2018, when L&G was requested to repay the funds, and 21 November 2018 when the payments were made. Unfortunately, Aviva had not made clear until 14 November 2018 that the funds for the F policy should be returned in addition to the funds for the P policy, so that had contributed to the delay.

- Thirdly, there was a delay by Aviva, between 23 and 29 November 2018, in allocating the money it had received from L&G in respect of the P policy. The Adjudicator considered that Aviva should have been able to allocate this money more quickly. Aviva had admitted that this delay should not have arisen, and it had paid a small amount of compensation to Mr T for that period of delay.
- In the Adjudicator's opinion all these delays were unnecessary. They had a cumulative effect. The end result was that the transfers from Aviva, that Birchwood had requested in September 2018, were not sent to the alternative pension provider until December 2018. The Adjudicator considered these delays constituted maladministration.
- In respect of the P policy, the transfer payment made by Aviva to Just Retirement was over £1,800 less than the original transfer value it had paid to L&G (and received back). This was due to market fluctuations after the original transfer date. The Adjudicator did not consider that Aviva should be required to make good the difference in value, because it had been Mr T's decision to go ahead with that transfer at that time. He could have waited until the Aviva transfer value had increased.
- The annuity terms that were finally offered by Just Retirement were less generous than Mr T had hoped for, but these had to reflect the transfer amounts it received from Aviva in December 2018. The Adjudicator did not believe that Aviva or L&G should compensate Mr T for receiving a lower pension income and a smaller PCLS from Just Retirement.
- There had also been delays in Just Retirement commencing pension payments to Mr T in mid-December 2018. These had been mainly caused by Just Retirement providing incorrect bank details to Aviva, so Aviva could not make the transfer more quickly. Just Retirement is not named as a respondent to Mr T's complaint, so I cannot make a finding against Just Retirement.
- In conclusion, the Adjudicator's view was that Mr T's main complaint, about his perceived financial loss, should not be upheld. That was because it was Mr T's decision to reverse the transfers to L&G, and then to transfer to Just Retirement. He could have remained with Aviva, or applied in August 2018 to transfer to Just Retirement, which would have saved some time. His annuity payments would then have started more quickly.
- The Adjudicator did consider that Mr T's complaint should be partly upheld because Aviva and L&G had processed the transfers from Aviva to L&G and then back to Aviva more slowly than was necessary, due to several acts and omissions, which, in the Adjudicator's opinion, amounted to maladministration. This had caused Mr T significant distress and inconvenience.

- In the Adjudicator's view, £500 would be an appropriate award for the significant distress and inconvenience caused to Mr T and that it would be appropriate for Aviva and L&G to share that liability equally.
46. Neither Aviva nor L&G responded to the Adjudicator's Opinion, although as L&G has since paid Mr T its share of the £500 recommended by the Adjudicator, I assume it is in agreement.
47. Mr T did not accept the Adjudicator's Opinion and his complaint was passed to me to consider.
48. Mr T provided his further comments which do not change the outcome. He says that:-
- He had very little option but to transfer back to Aviva. He had received a letter from L&G thanking him for accepting its offer and advising that it had requested the funds from Aviva. He had heard nothing further and assumed everything was fine. It was only when he was expecting the first payment that he received a telephone call from Birchwood saying L&G had suddenly reduced the offer by over £600 per annum. Birchwood advised that unless he requested a transfer back to Aviva that day he would have to accept the reduced offer.
 - He was not prepared to accept the reduced offer. So he reluctantly agreed to the proposal to reverse the transfer.
 - He did not include Birchwood in his complaint because at no time did either L&G or Aviva claim Birchwood was at fault. In all the paperwork he has seen L&G blamed Aviva, saying Aviva was late sending the funds, then had a problem with the policy numbers. Furthermore, it caused a third delay by adding a small amount of compensation so they could not match the funds.
 - If L&G had informed him it was having problems which could affect its offer, he could have chased it up with Birchwood. But L&G never informed him, it just expected him to accept the lower offer.
 - He does not understand anything about OMO or IV offers and that is why he used a financial adviser.
 - The Adjudicator said that the transfer payment made by Aviva was just over £1,800 less than the original transfer value it had paid to L&G and that he could have waited for Aviva rates to improve. He had already lost enough of his funds and he did not see why he should have to wait even longer to draw his pension. It was the only income he had and he had no confidence in Aviva. He has the right to shop around for a better deal.

Ombudsman's decision

49. I can appreciate Mr T's frustration with how the transfer of his funds from Aviva and the purchase of his annuity progressed. However, this was a complex transaction

involving a non-standard enhanced annuity rate, made more difficult by the decision to change the annuity basis part way through the process.

50. Mr T says that he had little option but to transfer back to Aviva. I acknowledge that, once Mr T and Birchwood had the revised quotation, he could see it had reduced quite significantly. But this was not the fault of either Aviva or L&G. The original quotation had been requested on an OMO basis and provided by L&G on that basis. Birchwood subsequently changed the basis required to IV which necessitated a revised quotation.
51. Birchwood was aware of the position. However, it confirmed that it was the IV basis that was required. Mr T's completed application form was received by L&G on 17 September 2018. Had Mr T proceeded on the OMO basis, there would have been sufficient time to complete the transfer, and for the annuity to be established, using the higher factors, before the original quotation expired on 2 October 2018.
52. Mr T refers to L&G not informing him it was 'having problems' with his quotation which could affect its offer and that he could have chased this up with Birchwood. L&G's rates decreased on 6 September 2018, during the guarantee period of its original quotation. On 19 September 2018, Birchwood asked L&G to obtain a revised quotation from its underwriters and there was always the possibility the rates would have gone down, or indeed up, in the meantime given the inherent volatility of the annuity market. It was not a requirement for L&G to point this out to Birchwood, or to Mr T. I do not agree that Mr T following up matters with Birchwood would have made any material difference to the outcome in the circumstances.
53. It does appear unusual that L&G did not share the revised quotation with Birchwood before requesting the funds from Aviva. It would seem that as far as L&G was concerned it had been selected to provide an annuity and it was now simply a case of ensuring that the annuity was on the correct basis. That said, given that the reduction was significant I would have expected L&G to check with Birchwood that Mr T wanted to proceed before requesting the funds. As the decision was subsequently made to reverse the transaction and proceed with a higher annuity purchased with Just Retirement, there is no evidence this has led to any financial loss.
54. I understand the point Mr T makes about not wishing to delay the payment of his pension any further. But this was a decision for him to make. He was fully aware of the position and so it was an informed decision. There was also the risk that his fund could have decreased further had he delayed. I do not consider that Aviva and L&G can be held accountable for his decision or for the reduction in his fund while it was out of market, as much of this had been caused by his request to change the annuity basis.
55. Mr T says he has not included Birchwood in his complaint. Birchwood is a firm, regulated by the Financial Conduct Authority, which provides financial advice. So it falls outside my jurisdiction. If Mr T has any concerns about its involvement in his case, he should refer these to the Financial Ombudsman Service.

56. There have clearly been areas, as identified by the Adjudicator, in which both Aviva and L&G have contributed to some unnecessary delays in Mr T's transfer being processed. While these have not caused him any financial injustice, they will have caused him significant distress and inconvenience. I agree with the Adjudicator that an award of £500 would be appropriate in the circumstances.
57. I uphold Mr T's complaint in part.

Directions

58. I note that L&G has already made a payment of £250 to Mr T following receipt of the Adjudicator's Opinion. Therefore, it is not expected to take any further action.
59. Within 14 days of the date of this Determination, Aviva shall pay £250 to Mr T for the significant distress and inconvenience he has suffered. This sum is in addition to the £50 compensation already paid to him for the delay between 23 to 29 November 2018 after it had received the funds back from L&G.

Anthony Arter

Pensions Ombudsman
23 March 2021