

## Ombudsman's Determination

Applicant	Mr Y
Scheme	Cowen International Group Personal Pension Plan ( <b>the Plan</b> )
Respondents	Aviva Life & Pensions UK Ltd ( <b>Aviva</b> )

## Outcome

1. Mr Y's complaint against Aviva is partly upheld. To put matters right, Aviva shall take the further steps detailed below.
2. Aviva shall also pay Mr Y £500 for the significant distress and inconvenience caused to her.

## Complaint summary

3. Mr Y complained that Aviva provided him with incorrect information which caused a delay in the transfer of his pension fund. Mr Y says that this delay resulted in a loss of £7,163.27 and asked that Aviva reimburse him for this.

## Background information, including submissions from the parties

4. In April 2019, Mr Y reviewed his pension arrangements. He had two personal pension plans; the Plan with Aviva and another Self-Invested Personal Pension (**SIPP**) with Interactive Investor. Mr Y decided to consolidate his pension arrangements so he investigated how he could transfer his funds in the Plan into his SIPP.
5. On 10 May 2019, Mr Y telephoned Aviva to enquire what was needed to complete such a transfer. Aviva confirmed to Mr Y that the transfer would be completed electronically through an electronic transfer service called Origo. Mr Y understood that the transfer would involve the investment he held in the Plan with Aviva being liquidated, meaning the funds would be converted into cash and not be invested in the market, whilst the transfer was progressed to completion. As a result, Mr Y wanted to wait for an "optimal" time to make the transfer.
6. On 20 June 2019, Mr Y received a letter from Aviva confirming that it would be closing one of his investments within the Plan. It said that if he wanted to switch to

another fund, he would need to reply by 14 August 2019. If he did not respond, his fund would be transferred to another fund of their choice.

7. During this time, Mr Y received an email from Interactive Investor which was offering cashback promotions for existing customers who transferred benefits into an Interactive Investor SIPP. Based on the size of the funds in the Plan with Aviva, Mr Y calculated that he could receive around £250 cashback if he transferred by 2 August 2019.
8. On 31 July 2019, the transfer value for the Plan was £187,734.52. Anticipating a positive shift in the market and wishing to benefit from the cashback deal offered by Interactive Investor, Mr Y decided to go ahead with the transfer and started to complete the transfer forms online with Interactive Investor. One of the questions asked by it was whether the transferring scheme required a transfer discharge form to be completed. Mr Y did not know the answer, so he telephoned Aviva the same day. He was told that as his pension was held in a Group Personal Pension which could not be transferred electronically on this occasion, he would need to wait for it to send him a transfer out pack, which would include certain documents which he would need to complete and sign. Mr Y was unhappy with this response as he had been told, on 10 May 2019, that he could transfer his pension electronically through Origo.
9. On 1 August 2019, Mr Y received the transfer out pack by email which was password protected. He could not open the attachment so contacted Aviva which re-sent the email, however the same issue occurred. Mr Y was subsequently told by Aviva that the transfer out pack would need to be posted to his home address. Mr Y told the call handler that he had previously been told that he could complete the transfer instantaneously through Origo, but he was later told that this was not the case. Mr Y said that he had been considering a transfer for a while, but he had not yet made a final decision. The call handler confirmed that the transfer pack had been sent out the previous day by second class post but offered to resend this by first class. Mr Y did not see this as necessary as he thought it likely they would both arrive around the same time.
10. By 5 August 2019, the transfer out pack had not arrived by post. Mr Y telephoned Aviva again and was told that the previous advisor, who said that he could not transfer the money electronically by Origo, had provided incorrect information; this could in fact be done.
11. On 7 August 2019, Mr Y completed the discharge transfer forms electronically.
12. On 8 August 2019, Mr Y's funds in the Plan, which amounted to £180,571.25, were transferred to Interactive Investor through Origo. Mr Y then raised a complaint with Aviva.
13. On 19 August 2019, Aviva provided its final response to the complaint. It agreed that Mr Y had been provided with incorrect information. Aviva explained that it had listened to the calls he made and said: -

- Mr Y did not say anything specific in the calls to suggest that he was going to go ahead with the transfer on 31 July 2019.
  - Aviva did not believe it had caused Mr Y any financial loss. However, it wished to apologise for the poor service it had provided and had sent him a cheque for £150 in respect of this.
14. Mr Y was unhappy with this outcome and asked Aviva to review its decision.
15. Aviva reviewed the calls again and decided that Mr Y had in fact specified that he wanted to transfer on 31 July 2019. To put matters right, Aviva explained the timeline of events: -
- On 5 August 2019, Mr Y was given the correct information regarding the transfer which was that he could transfer through Origo.
  - On 8 August 2019, three working days later, Aviva received the Origo request from the ceding scheme. It transferred the funds to Interactive Investor the same day.
  - Aviva said that had Mr Y received the correct information on 31 July 2019, the same three working day turnaround should apply meaning that the transfer would have been completed on 5 August 2019 for an amount of £181,113.84.
  - Aviva therefore agreed to pay Mr Y the difference between the transfer values for the dates in question either directly into the SIPP or as a cash settlement, less tax.
16. Mr Y disagreed with Aviva's response. He said that what Aviva had said was factually incorrect because the Origo transfer was not initiated on 5 August 2019, but instead on 8 August 2019. The actual transfer was therefore completed on the same working day and so he did not agree with Aviva's logic about the three working day turnaround.
17. Mr Y also disagreed that he would have taken three working days to initiate the transfer had he received the correct information on 31 July 2019. He said that the reason he did not act with urgency on receiving the correct information on 5 August 2019 was due to him missing the deadline of 2 August 2019 for the cashback promotion.
18. Aviva responded to Mr Y's comments. It explained that in these circumstances, it allowed for any delays which may be caused by itself or the applicant. It said that Mr Y received the correct information on 5 August 2019, but it took him until 8 August 2019 to initiate the transfer (three working days). As a result of this, it applied the same hypothetical scenario that had Mr Y been given the correct information on 31 July 2019, it would have taken him the same length of time to decide to initiate the transfer which was three working days. The transfer would therefore have taken place on 5 August 2019 with a transfer value of £181,113.84.

### **Mr Y's position**

19. Mr Y said that, but for the misinformation he received regarding Origo, he would have completed his online request on 31 July 2019. As the value on this date was £187,734.52, he has suffered a financial loss of £7,223.34.

### **Aviva's position**

20. There was a three-day delay between Mr Y receiving the correct information regarding the Origo transfer and him completing an online transfer request. The correct compensation would be the difference in fund values between the relevant dates.

21. Aviva also explained:

“...we have agreed in these situations to offer [compensation] to customers as a cash settlement and not to transfer it to the other scheme. This is because any payments made now after the transfer has been completed would be treated as additional contributions and not as part of the original transfer, which can have tax implications. However, there is nothing stopping [Mr Y] paying this into the scheme himself should he so wish. In fact, he could actually benefit by this.

If he accepted the additional £602.66 gross we would pay him £512.26 net. This is because we would pay him as if it were a pension payment; 25% tax free and the rest net of 20% tax.

If he were then to pay this into his pension he would actually receive relief on this meaning £614.71 would get added.”

### **Adjudicator's Opinion**

22. Mr Y's complaint was considered by one of our Adjudicators who concluded that further action was required by Aviva. The Adjudicator's findings are summarised below:-

- Mr Y was told that he could not complete his transfer on 31 July 2019 through Origo and he was not given the correct information until 5 August 2019. The misinformation given to Mr Y amounted to maladministration.
- On receipt of the correct information, Mr Y initiated the transfer into the SIPP on 7 August 2019 which was completed by Aviva, through Origo. Mr Y said that it is due to receiving the incorrect information from Aviva that his decision to transfer was delayed until 7 August 2019.
- The Adjudicator agreed that, on the balance of probabilities, Mr Y had planned to transfer on 31 July 2019, as he wished to take advantage of a cashback

promotion and a possible rise in the market at this time. Aviva were also closing one of the funds he was invested in and he had to make a decision about this by 14 August 2019.

- The Adjudicator's view was that had Mr Y received the correct information on 31 July 2019 then he would have been in a position to complete his online transfer request using Origo that same day, as planned. He had a financial incentive to transfer by this date and so the Adjudicator did not agree with Aviva's point that Mr Y would have taken three days to make the decision to transfer.
- The Adjudicator's Opinion was that it was reasonable for Mr Y to have wanted to take stock of his circumstances given that he was informed he could no longer complete the transfer in time to receive the financial incentives.
- The Adjudicator's view was that Mr Y had suffered a financial loss because of the incorrect information given by Aviva and so Aviva should establish what the current value of the SIPP would be, assuming the transfer had taken place on 31 July 2019 with the higher transfer value, taking into account any withdrawals or fund switches.
- In relation to non-financial injustice the Adjudicator's view was that the ex-gratia payment offered was insufficient and an award of £500 was more appropriate in the circumstances.

23. Mr Y accepted the Adjudicator's Opinion, but Aviva did not, and the complaint was passed to me to consider. Aviva provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Aviva.

#### **Aviva's additional comments**

24. Aviva maintained that:

- No transfer could (or would) have been started and concluded on 31 July 2019, even if Mr Y had been informed that an Origo transfer was possible.
- Mr Y did not send his transfer request on 8 August 2019 as the Adjudicator has stated. Instead, it was on 7 August 2019 as outlined in the Origo transfer paperwork.
- It took three business days in total to process the transfer request; it was received on 7 August and was completed after business closure at 19:25 on 8 August.
- Mr Y was undecided about whether to transfer during the call on 1 August "regardless of how the transfer could proceed". This was demonstrated by Mr Y's use of comments such as "I am considering transferring" and "do I have to go ahead with the transfer after I get the pack".

- Mr Y showed no urgency over the transfer during the telephone call on 1 August. He did ask for the transfer forms to be emailed but could not open these on his computer and so he opted to receive the transfer forms by post.
  - Mr Y was not incentivised to transfer by the cashback offer, but by the fund change that was taking place in mid-August.
25. Aviva said, “the correct delay to look at is 3 working days giving a price point of 5 August and a shortfall of £602.66 gross as this is the timeframe it took the customer and his new scheme to make a decision and effect the transfer”. It is rarely ever possible to enact a transfer from start to finish any quicker than this.
26. Insufficient consideration has been given to the telephone call on 1 August 2019 or the Origo transfer paperwork which are key to the investigation.

### **Mr Y's additional comments**

27. Mr Y said:
- that to accept Aviva's position and version of events, one would have to believe Aviva somehow knows more about his “mind, thoughts and intentions” than he does himself.
  - He has been honest and truthful, but Aviva has instead denied responsibility and delayed resolution of the issue which has caused him further upset and distress.

### **Ombudsman's decision**

28. Mr Y's complaint is that Aviva provided him with incorrect information which caused a delay in the transfer of his pension fund. Mr Y also says that this delay resulted in a loss of fund value.
29. There is no dispute that Aviva gave Mr Y incorrect information on 31 July 2019 when it informed him that the transfer could not be made electronically through Origo and so he was unable to proceed with the transfer in the way that he had been led to believe was possible. As a consequence of the misinformation Mr Y missed out on the financial incentive offered at that time and, as the transfer was delayed, ultimately suffered a reduction in fund value. So, there is no dispute that an error occurred which amounted to maladministration.
30. Aviva accepts that one of its call handlers incorrectly informed Mr Y that he could not use the Origo system to complete his transfer. The issue that needs to be considered then is to what extent Mr Y's financial planning was affected by this incorrect information.
31. Mr Y enquired about making a transfer into the SIPP in May 2019 and, having obtained information to say this could be completed instantaneously through Origo,

and having no reason to suspect that this information was incorrect, he waited for an “optimal” time to initiate this transfer. Mr Y says this time came when he received notification that Aviva was closing one of its funds, the share price value in the market had risen and Mr Y was given a financial incentive provided he made the transfer by 2 August 2019. I have seen no evidence to suggest this was not the case and I find that, on the balance of probabilities, Mr Y intended to complete the transfer before 2 August 2019.

32. Aviva has said that the transfer took three business days to complete and so the view that the transfer could have taken place on the same day was incorrect. I accept, as confirmed by the Origo paperwork, that the transfer application made on 7 August 2019 was not completed on the same day.
33. However, the transfer was completed on 8 August 2019. Aviva has said that as the transfer was completed outside of business hours at 19:25, this is in effect a three-working day turnaround for the transfer to be completed. However, this only demonstrates that Aviva has the facility to complete transfers outside of business hours it does not necessarily demonstrate that three complete working days are required to complete the transfer. While it is not possible to conclude with any certainty at what time Mr Y might have completed the electronic forms to facilitate the transfer, I see no reason not to assume he would have done so on 31 July 2019. Nor have I seen any compelling evidence to suggest the transfer would not have been completed by 2 August 2019.
34. The Origo paperwork provided by Aviva shows the transfer request was logged on 7 August 2019. That request was then activated by Aviva at 09:16 on 8 August 2019 and completed by 19:25 on the same day. This demonstrates that had Mr Y been given the correct information about being able to use Origo it is highly likely the transfer could have been completed on 1 August 2019. Consequently, I find that the misinformation and delay by Aviva directly impacted the timeliness of the transfer and that Mr Y subsequently suffered a financial loss as a result.
35. Whether or not Mr Y needed to take additional time to consider his options after missing the 2 August 2019 deadline is not relevant to the complaint at hand. It is clear Mr Y was given incorrect information, and that this incorrect information then prevented him from managing his retirement provisions in the way that he saw fit. It is understandable that having received poor service from Aviva, and having missed out on the cashback offer, that Mr Y would need time to take stock of his situation as reflected in the call on 1 August 2019.
36. I accept Aviva’s contention that Mr Y was undecided about transferring his funds during the call on 1 August 2019, however, the issue is not whether Mr Y wanted to transfer on 1 August 2019, but whether, had he been given the correct information the previous day, it is more likely than not that he would have gone ahead with the transfer given the financial incentives available to him.

37. I find that it is more than reasonable to expect that Mr Y would need to reconsider his options at this point and would not be acting with the same urgency that he previously had. Furthermore, I agree that, on the balance of probabilities, based on the information available that Mr Y would have been incentivised to make the transfer due to the cashback offer and rise in market value rather than the changes taking place in mid-August.
38. To conclude, the available evidence shows that it was possible for the transfer to have been completed by 1 August 2019 and that it is highly likely Mr Y would have met the financial incentive deadline had he been given the correct information.
39. I have no doubt that Aviva's maladministration will have caused Mr Y significant distress and inconvenience which should be recognised.
40. I uphold Mr Y's complaint.

## **Directions**

41. Within 28 days of the date of this Determination Aviva shall:

- request that Mr Y provide it with a letter of authority to contact his SIPP provider;
- within 14 days of receipt of the letter of authority, it should request the necessary information from the SIPP provider to enable it to establish what the current value of the SIPP would be, assuming the transfer had taken place by close of play on 1 August 2019, taking into account any withdrawals or fund switches;
- within 14 days of receipt of the information from the SIPP provider, it should compare that notional value with the actual value of Mr Y's SIPP at the date of the calculation;
- if the notional value is higher than the actual value then the difference should be paid into Mr Y's SIPP;
- pay Mr Y £250 to compensate him for the cashback promotion offer which he lost; and
- pay Mr Y £500 for the significant distress and inconvenience caused to him.

**Anthony Arter**

Pensions Ombudsman  
21 July 2021