

Ombudsman's Determination

Applicant	Mr S
Scheme	Aviva Personal Pension Plan (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 complained that Aviva did not transfer the amount he was expecting to his new pension provider.

Background information, including submissions from the parties

3. On 14 October 2019, Mr S sent an email to A J Bell, his selected new pension provider. He asked whether the investments he had in the Plan could be accepted as they stood or would he need to disinvest them and transfer the funds as cash.
4. On 15 October 2019, A J Bell responded and explained that it would be unable to accept Aviva pension funds as these were restricted to Aviva customers. Mr S would be required to sell the holdings before they could be transferred.
5. On 5 February 2020, A J Bell submitted a transfer request to Aviva.
6. On the same day, Mr S used his My Aviva account to request a switch of his investments into the Cash Deposit Fund.
7. On 7 February 2020, Mr S telephoned Aviva and said he had logged a request to disinvest his funds. He said that Aviva confirmed:-
 - The switch was in progress, and it would be backdated to the day it was originally requested (the **switch effective date**).
 - The units would be sold on the day the switch was requested.
 - The switch would take ten working days to be completed.

8. On 8 February 2020, the switch was processed with an effective date of 7 February 2020. The fund value on the switch effective date was £224,397.55. This was confirmed to Mr S by letter (the **switch confirmation letter**).
9. On 10 February 2020, the transfer was processed with an effective date of 5 February 2020 with a value of £222,290.29.
10. On the same day, A J Bell sent an email to Mr S to confirm receipt of the cash transfer value of £222,290.29 from the Plan. The email also stated that Mr S had 30 days from the date he received the email to exercise his right to cancel the transfer. The email also stated:-

“If you choose to cancel a transfer after a transfer payment has been paid to your SIPP, we will attempt to repay the amount received to the transferring scheme. However, the transferring scheme may refuse to accept the repayment, or only accept it on different terms to those applying prior to the transfer, in which case we would require your instructions on whether to pay the amount to another registered pension scheme.
11. Later that day Mr S telephoned Aviva and asked why the transfer value was lower than he expected. He had assumed that it would be the same as the amount shown in the switch confirmation letter.
12. On 12 February 2020, Aviva confirmed that the transfer value used was from 5 February 2020 which was the date the transfer was requested. The value on 5 February 2020 was £222,290.29. This was prior to the switch being processed, which was not required in any case as Mr S had requested a transfer. Mr S was unhappy with Aviva’s response and stated that the funds should have been in the deposit fund and not in the market. He also said that the amount in the switch confirmation letter should have been the transfer value.
13. On 1 April 2020, Aviva responded to Mr S’ complaint. In summary:-

The switch effective date

- The representative Mr S spoke to on 7 February 2020 confirmed that the switch effective date would be the date the request was received, that is 5 February 2020.
- This was incorrect as a switch request is never processed with an effective date the same as the date of receipt.
- The investment funds used by Aviva for its pensions are split into two categories, Category A and Category B. Most funds fall into Category B. Category A are funds that have an Asian investment element.
- The Asian Stock market closes before the Western stock market. Therefore, when Category A funds are involved, the switch date is two working days after

the request is received. This is to make sure no one can take unfair advantage of the timing.

- When a switch request involves only Category B funds the switch effective date is one working day after the switch request was received.
- As some of the funds Mr S switched out of were Category A funds the effective date used was two working days after receipt of his request. This was 7 February 2020 as shown on the switch confirmation letter.

The transfer effective date

- The transfer request for Mr S' plan was received from AJ Bell via an electronic system.
 - If a transfer request is received this way when it is processed Aviva always backdates the effective date to the date of receipt. In Mr S' case this was 5 February 2020.
 - As the transfer and switch were received on the same date, Aviva should have stopped the switch request going through and contacted Mr S to explain that the transfer would be processed with effect from 5 February 2020.
 - Aviva gave Mr S incorrect information regarding the switch effective date and also allowed the switch request to go through after it had received a transfer request. This led to a loss of expectation for Mr S regarding the amount he would receive for his transfer. Aviva made an offer of £350 to recognise this.
 - As the transfer was processed correctly in accordance with its normal procedures it was unable to honour the higher value shown on the switch confirmation letter.
14. On 3 April 2020, Mr S emailed Aviva to say that it had confirmed he should have been contacted and informed that the switch request would not go ahead. If this had happened, he would have been able to contact AJ Bell and inform them that it could not accept the transfer as his funds had not been disinvested to cash. On that basis he would have been able to reconsider his options.
 15. The same day Aviva responded to Mr S to say that the transfer would always have been a cash transfer regardless of the funds the Plan was invested in. Aviva would always disinvest the monies when processing a transfer.
 16. On 6 April 2020, Mr S emailed Aviva to say that from the outset he was expecting that the switch took place first and then the funds would be transferred after that. There was a change to that expectation which he was not made aware of. Mr S wanted to know what his cancellation rights would have been had he been contacted to explain

that the switch request should have been stopped and that the transfer would be processed with effect from 5 February 2020. He would have expected that he would have the right to make an informed decision based on new facts as to whether or not to proceed with the transfer.

17. On 7 April 2020, Aviva responded by email to explain that if it had contacted Mr S to make him aware that the switch request would not go ahead, it would have been able to cancel the transfer request at that time. However, with the benefit of hindsight, it would be easy to say now that he may have requested the transfer to be stopped, because the fund value had increased on the switch effective date.

Adjudicator's Opinion

18. 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:-
 - Aviva agreed that Mr S was given incorrect information regarding the effective date that a switch would be processed, however the fundamental issue at hand was that there has been a misunderstanding regarding the transfer process.
 - When Mr S wanted to initiate the transfer of his pension from Aviva to AJ Bell he checked with AJ Bell as to whether his funds needed to be disinvested. Mr S has not provided any evidence to show that he discussed the process with Aviva. Had he done this it is likely that Aviva would have informed him that he did not need to carry out a switch request through his My Aviva account before the transfer and that disinvestment would automatically take place as part of the transfer process.
 - Aviva carried out the transfer according to its usual process and so has used the date that the transfer was requested as the effective date. In the Adjudicator's opinion, there was no maladministration and the use of 5 February 2020 as the effective date did not cause Mr S any financial loss.
 - Mr S has said that if he had full information regarding the different values he would obtain for the switch on 7 February 2020 and the transfer on 5 February 2020 he would not have proceeded with the transfer. AJ Bell informed Mr S on 10 February 2020 that he had 30 days to rescind the transfer and that in those circumstances it would attempt to repay the funds to the transferring scheme.
 - Mr S had full information about the transfer value within 30 days of 10 February 2020 and he did not make any attempt to rescind the transfer. In the Adjudicator's view Mr S agreed that the transfer should go ahead with the value of £222,290.29.
 - Aviva should have given Mr S correct information when he telephoned to enquire regarding the switch effective date. In addition, Aviva should have

contacted Mr S and informed him that the switch needed to be cancelled. If this had happened Mr S would not have been provided with the switch value and would not have expected to receive this amount.

- Aviva offered Mr S £350 to recognise the distress and inconvenience caused by its errors. In the Adjudicator's opinion this was an appropriate amount and if Mr S wished to accept it, he should contact Aviva.

19. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S has provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr S which are summarised below.

Mr S' additional comments

20. As the transfer and switch were received on the same date, Aviva should have stopped the switch request going through and contacted him to explain that the transfer would be processed with effect from 5 February 2020. The failure to do this has led to a loss of expectation regarding the amount he would receive for his transfer.
21. Aviva did make an offer of £350 to recognise the distress and inconvenience caused but he disagreed with the amount offered. He accepted this amount on the basis that he could still take his complaint further.
22. He did not think it was his responsibility to discuss the process with Aviva. As far as he was concerned AJ Bell were dealing with the transfer on his behalf and the transfer request would proceed through them. He said that had he spoken to Aviva it is unlikely that they would have informed him that disinvestment would have automatically taken place as part of the transfer process.
23. The mistakes made by Aviva have led to an underpayment in his transfer value of £2,107.26.

Ombudsman's decision

24. Mr S complained that Aviva did not transfer the amount he was expecting to his new pension provider.
25. I agree that the failure to stop the switch request led to a loss of expectation regarding the amount Mr S thought would be transferred, although it is not clear to me that there was a legal obligation on Aviva to stop the switch at that time (as, ultimately, the issues arose as a result of it actioning two requests deliberately made by Mr S on the same day). However, a loss of expectation is not remedied by paying a higher amount than Mr S is entitled to. The transfer of Mr S' funds to his new pension provider took place on the effective date of 5 February 2020. I agree with the Adjudicator that this was the correct date for the transfer and that no financial loss has been caused to Mr S by the use of this date.

26. Aviva's error was to give Mr S incorrect information regarding the effective date of the switch (albeit after Mr S had already requested both the switch and the transfer) and to have provided Mr S with a value for the switch rather than contacting him and letting him know that a switch did not need to take place.
27. However, it is clear to me that the cause of the problems regarding the switch and the transfer dates was a misunderstanding Mr S held regarding the transfer process. This was not the fault of Aviva. AJ Bell appears to have given Mr S information regarding what to do with his investments based on an 'in-specie' transfer where they would be expected to provide the same investments as those Mr S held in the Plan. As they could not do this, they advised Mr S that he needed his investments to be converted to cash before they were transferred. However, Mr S did not need to do this, as a transfer would be made in cash in any event as part of Aviva's transfer process.
28. In my view, it would have been prudent for Mr S to check the transfer process with Aviva (as he sensibly did with the receiving scheme) before making the transfer and before he decided to switch his investments to cash. Simply saying that Aviva would not have informed him of the correct process does not negate the fact that when carrying out such a transfer it is better to check with a current provider whether any particular action is needed to enact the transfer.
29. In any event, Mr S was offered the opportunity to rescind the transfer and repay the funds to the Plan. He chose not to take that opportunity.
30. I agree that it would have been preferable if Aviva had contacted Mr S to check whether he wanted to cancel the switch request, but it did not. Although, even if it had, there is nothing to suggest that Mr S would have chosen not to proceed with the transfer.
31. I find that the £350 offered by Aviva to recognise any distress and inconvenience caused is appropriate in the circumstances. I note that Mr S has already received this amount.
32. I do not uphold Mr S' complaint.

Dominic Harris

Pensions Ombudsman
6 April 2023