

## Ombudsman's Determination

Applicant	Mr N
Scheme	Aviva Personal Pension Plan ( <b>the Scheme</b> )
Respondents	Aviva Life & Pensions UK Limited ( <b>Aviva</b> )

## Outcome

1. Mr N's complaint against Aviva is partly upheld. To put matters right, Aviva shall pay £500 to Mr N.

## Complaint summary

2. Mr N complained that a transfer payment of £6,585.13 to his bank account was rejected multiple times. Mr N has said that Aviva delayed in identifying and communicating about this with him and his financial adviser (**the IFA**) and as a result he suffered financial loss because of a lack of investment opportunity.

## Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. On 16 June 2020, Mr N's IFA on behalf of Mr N, submitted a request to Aviva to transfer Mr N's entitlement in the Scheme to IAG in Canada (**the Receiving Provider**).
5. On 3 July 2020, Aviva wrote to Mr N, acknowledging his transfer request, and said that because of the economic impact Covid-19 had on the financial markets, payments (including transfers) out of the Property Fund had been deferred. The letter said that once the deferment had been lifted Aviva would automatically proceed with any instructions given to it.
6. On 20 August 2020, Aviva advised Mr N and the IFA that a payment of £6,585.13 in respect of Mr N's entitlement in the Scheme had been transferred to the Receiving Provider using the details provided. The payment was returned on 24 August 2020. A second attempt to transfer the monies was made and returned on 7 September 2020.

7. The IFA discovered, through a third party, that the payment had not in fact been completed on 20 August 2020. The IFA asked Aviva why it had not informed him of this. On 11 September 2020, the IFA contacted Aviva again to seek an explanation.
8. On 9 October 2020, the IFA made a formal complaint to Aviva on behalf of Mr N. He stated that Mr N had suffered financial loss because of a lack of investment opportunity due to maladministration and delay caused by Aviva.
9. On 20 October 2020, Aviva resent the monies again and also sent an email to the IFA confirming the payment references used to assist in tracing the payment.
10. On 11 November 2020, the IFA emailed Aviva, seeking an update on Mr N's complaint.
11. The payment was confirmed as received by the Receiving Provider on 24 November 2020.
12. On 8 December 2020, in its response to the IFA, Aviva acknowledged that it had been eight weeks since Mr N's complaint had been brought to its attention. It stated that the issues raised in the complaint were being investigated. It apologised for the delay and stated that it would contact the IFA regarding the matter in four weeks.
13. On 12 January 2021, in its response to Mr N's complaint, Aviva stated that:-
  - It had followed the instructions provided by the Receiving Provider for referencing the payment when it made the transfer. The Receiving Provider's account received the money but did not recognise the transfer.
  - When it used the standard international banking criteria instead, the Receiving Provider accepted the reference and therefore the transfer.
  - The Receiving Provider confirmed that the payment had been received.
  - Because Aviva followed the instructions given by the Receiving Provider, the Receiving Provider should be liable for any financial loss incurred.
14. Aviva apologised for having not identified sooner that the payment had failed. For this failure, it offered Mr N £250.
15. In January 2021, in his response to Aviva, the IFA requested that the payment of £250 offered to Mr N be made by cheque.

### **Aviva's position**

16. Aviva stated that:-
  - There was a property fund deferral which was outside its control which prevented the transfer earlier, and it followed FCA guidance regarding this.
  - The delay in sending the money to Mr N's Canadian bank account in August was due to the Receiving Provider not having provided the correct details.

- It offered Mr N £250 as it could have pursued the Receiving Provider sooner regarding the transfer.
- Any claim for financial loss should be directed to Mr N's IFA or the Receiving Provider.
- Its technical team had followed the correct procedure to make the payment transfer.

### **Mr N's position**

17. Mr N stated that:-

- Only 18% of his holding had been in Aviva's property fund. The rest of it could therefore have been transferred following the request on 16 June 2020 for Aviva to do so.
- The main issue was that Aviva failed to communicate with him regarding the payments and that it caused unreasonable delays.

### **Adjudicator's Opinion**

18. Mr N'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:-

- Aviva initially provided incorrect information to Mr N and communicated poorly with him and the IFA concerning the payment. This amounted to maladministration.
- There is no evidence that Mr N would have invested the money in a particular investment fund. So, there is no evidence that he suffered financial loss as a result of the delay in the transfer payment caused by the banking error. Furthermore, the error appears to have been due to another party, rather than Aviva.
- Mr N was told by Aviva that the payment transfer had been successful. Although this is what Aviva considered to have been true at the time, the information was incorrect. Aviva could have minimised the risk of making this mistake, by checking more thoroughly that the payment had been received before informing Mr N that it had. Aviva's inaccuracy and lack of communication caused Mr N significant distress and inconvenience.
- Although Aviva's response to the IFA's complaint was made later than requested, it was very detailed, and in the meantime, Aviva advised the IFA of when a response would be issued. So, Aviva took reasonable steps to put matters right, and the effect of the problem was short-term. However, a more appropriate award for the distress and inconvenience caused would be £500.

19. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr N 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 N.

### **Mr N's additional comments**

20. There is evidence that he would have invested the money he requested to have transferred in a particular investment fund, as detailed in an email from another financial advisor dated 30 November 2020. In that email, that financial advisor detailed how the funds were to be invested had the initial transfer payment been successful, and what the predicted investment returns would have been. This provides evidence of financial loss. The email included the following statement:

"The funds were ultimately not invested as [Mr N] decided to use these transfer proceeds for income purposes in 2021. We would have however invested the funds in the same proportions along with the other transfer proceeds. Had they been invested on August 20 2020 as was the intention, in the same ratios as the initial transfer proceeds, they would have earned a rate of return of 3.43%."

21. No consideration has been given to his IFA's costs or discrepancies between Aviva's internal records regarding his complaint. A payment of £300 should be paid in respect of the IFA's time and costs to continually chase Aviva by telephone, emails and letters between 20 March 2020 and 23 November 2020.
22. Aviva could have transferred 82% of the fund months earlier than it did.
23. It is unclear how the award of £500 was decided upon.
24. He questioned the factual basis of Aviva's assertion that the delay in transferring his money was due to the Receiving Provider providing incorrect details.

### **Ombudsman's decision**

25. Mr N complained that a transfer payment of £6,585.13 that Aviva made to IAG in Canada was rejected multiple times. Mr N said that Aviva delayed in identifying and communicating about this with him and his IFA. He contends that there is no evidence that the delay in transferring his money was due to the Receiving Provider providing incorrect details. Undoubtedly, Aviva could have communicated better with Mr N and the IFA regarding the initial difficulties in making the transfer payment. Aviva should not have waited until after the second attempt, to make the payment to communicate with the IFA or the Receiving Provider, when it was clear there was an issue with the details being used to make the payment. I find Aviva's initial inaction amounts to maladministration.
26. Mr N contended that he experienced financial loss as a result of the delay in the transfer being made. He said that this was because he was unable to invest the monies transferred in his chosen funds. The additional information provided by Mr N

regarding financial loss, is hypothetical. It is what he claims he would have done, and the investment gains that he predicted would have been achieved, had the funds been invested, which they were not. Actually, Mr N chose not to invest the monies, and instead used the proceeds as income. I find there is no evidence of financial loss as a result of the delay in the transfer.

27. Mr N has submitted that the costs incurred by his IFA in relation to dealing with the complaint should be recognised. The IFA acted for Mr N to ensure that the transfer process was completed. There is a distinction between the costs incurred liaising with a provider in order to address an issue itself, and any professional costs incurred after complaining to The Pensions Ombudsman (**TPO**). I do not generally consider that any award should be made to account for the time spent by an applicant in bringing a complaint to TPO as the service offered is free.
28. However, when the applicant or his/her representative has completed reasonable work to help sort out an issue with the respondent itself, I will consider making an award to account for expenses directly incurred as a result of any maladministration which I find to be proved. In the case of Mr N, he already had an IFA who did additional work for him when things went wrong. I consider it was reasonable for Mr N to allow the IFA to continue to act on his behalf, to sort out the issues during the transfer process. However, in this case I have been provided with no evidence of hours billed to achieve that outcome, and it has not been demonstrated that the costs claimed have actually been billed. I find there is insufficient evidence of loss incurred directly as a consequence of the delay.
29. Mr N contended that the Property Fund deferral should not have prevented at least 82% of the monies being transferred earlier. Mr N should have been aware of the decision to defer payments out of the Property Fund on receipt of the letter dated 3 July 2020, and could have asked Aviva if a partial transfer was possible. However, as he took no action, and the initial request was for the whole of his entitlement in the Scheme to be transferred, I find it was reasonable for Aviva to wait and process the transfer in its entirety once the deferment had been lifted.
30. Mr N was understandably dissatisfied with the service he received from Aviva and I have no doubt he suffered significant distress and inconvenience. The purpose of my awards for non-financial injustice is to recognise the level of distress and inconvenience the applicant has suffered as a direct result of the respondent(s) maladministration. The awards are not intended to be punitive. I find that the non-financial injustice Mr N suffered was significant enough to warrant an award of £500.
31. I partly uphold Mr N's complaint.

## **Directions**

32. Within 28 days of the date of this Determination, Aviva shall pay Mr N £500.

CAS-69704-Z0J8

**Anthony Arter**

Pensions Ombudsman  
23 December 2022