

Ombudsman's Determination

Applicant	Ms N
Scheme	Aviva UK Life Personal Pension
Respondent	Aviva UK Life (Aviva)

Outcome

1. I do not uphold Ms N's complaint and no further action is required by Aviva.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Ms N's complaint is that she was incorrectly informed by Aviva that it would complete her fund switch, based on the unit prices as published on its website at the time of the transaction on Tuesday 25 August 2015. She says that she was given this information during a telephone call on Monday 24 August 2015.
4. Ms N argues that, if she had been advised correctly that the prices at which the units would be sold would only be known after the close of business on the day of the transaction and published on Aviva's website on the following day, 26 August 2015, then she would not have instructed the fund switch.

Background information, including submissions from the parties

5. Ms N called Aviva on 24 August 2015 at about 4.20pm, because she had been unable to request a fund switch online due to problems with its system earlier that day. Ms N was concerned about the volatility of the stock markets and she referred to the rapid reduction in her policy value. During the beginning of the conversation, Aviva said:

“...So you looked, was it yesterday you looked, sorry? So those values would've been the values of the 21st because we take them from the previous working day.”
6. Later in the conversation, Ms N confirmed that she did not wish to take financial advice as she already knew the fund switch that she intended to make. Aviva explained to Ms N that the effective date of the fund switch will be the next working

day, unless the switch is into an overseas (category A) fund where the effective date will be two working days. Aviva said:

“Let me explain, there’s 2 different categories, there’s category A and category B. So category A’s are the funds that are invested overseas so we don’t know what those markets are going to look like when they close, so that’s why we say 2 working days. So all your funds are in category B. Now if you switch from a category B to a category B the effective date will be tomorrow. Now if you’re going from a B to an A, you’re going to overseas, due to the sort of time lapse etc. We don’t know what that’s going to be.”

7. Ms N was switching her funds into a category B fund and the effective date of the transaction was the next working day, 25 August 2015. She accepts that she did not expect the fund switch to be completed on the day of her phone call, 24 August 2015. However, she was concerned about the value at which her funds would be sold on the following day and she enquired about this. Ms N asked:

“But you can tell me what you’re selling at can’t you before you sell?”

8. Aviva replied:

“You can have a look at the funds that you want to go in, obviously tomorrow we don’t know what it will be and we can’t cancel requests...”

...I can’t tell you what tomorrow’s will be as obviously no one knows until that’s closed...”

9. Ms N then checked what the position would be if she contacted Aviva on the morning of the fund switch. I have copied the relevant parts of the transcript below:

Aviva: “But you’ll still belong in it as it will be the day after so if you then ring us tomorrow and say, ‘right, I want to switch’ then it will go on Wednesday’s date.”

Ms N: “Even if I ring first thing in the morning?”

Aviva: “Yeah, it goes on the effective day of the day after, yeah.”

Ms N: “So there’s no way that I can switch today then?”

Aviva: “No, it’s exactly the same if you do it online, it will always be the next working day, then if it’s a category A, so it’s overseas, it will be 2 working days anyway. It’s exactly the same if you do it online.”

Ms N: “Ok Ok, well I’m just going to switch now then and cut my losses.”

Aviva: “You want me to do that for you now?”

Ms N: “Yes, yes, but I’d like to know tomorrow though, what I’m selling at.”

Aviva: “Well you’ll be able to go on the website and have a look.”

Ms N: "Ok yeah. Can I stop it if it's gone down?"

Aviva: "No, you can't cancel a switch request."

Ms N: "This is what I'm not happy with. You should be able to switch on the same day so you know what you're switching at."

Aviva: "Well you can't because of the change in the markets because we don't know tomorrow what the markets are going to look like."

Ms N: "But why can't I if I phone in the morning and know what the markets are, can't I just switch when I know what the markets are tomorrow? Why does it take you a day?"

Aviva: "Because it always goes on the close of business on that day, we can't predict, we've not got a crystal ball, unfortunately."

Ms N: "Ok Ok."

Aviva: "Are you going to go ahead with it or not?"

Ms N: "I know what the close of business is now then, it's what it was showing on your site this morning isn't it?"

Aviva: "Well that will have been as of yesterday, that's what the effective date's always sort of a day later cos we don't know what it's going to close as today if that makes sense."

Ms N: "Oh I see where you're coming from, it does make sense, it does make sense."

Aviva: "That's why the values we can only give as the previous working day because."

Ms N: "Which is not good is it? Cos I don't know today..."

Aviva: "...It's not instant like that, no, even online it's not. Obviously we need to wait till the close of business to see what the prices are and..."

Ms N: "See, I'm happy to switch on what it shows today but I might not be on what it is tomorrow. This is the thing, and even if I leave it till tomorrow, I'm not going to know. Just switch it. Just switch it."

Aviva: "Are you definitely sure?"

Ms N: "The market's volatile, it's not going to get better and I can always switch back, I'd better switch before it goes down anymore, yeah."

10. Ms N confirmed that she wished to complete the fund switch and the conversation moved to the subject of fund charges. During this part of the conversation, Ms N asked if she could check the prices as they change throughout the day.

Ms N: "Can you not see the prices as they change during the days?"

Aviva: "No, it's just close of business..."

11. Ms N complained to Aviva because she believed that she would get the prices at the close of business on 24 August 2015, and as published on Aviva's website at the time of the fund switch on 25 August 2015.
12. Aviva did not uphold her complaint. In summary, Aviva said the effective date of the fund switch was 25 August 2015 and the values on that date would be available to view on its website on the following day, 26 August 2015. Aviva concluded that it gave sufficient information, during the telephone call on 24 August 2015, about how fund switches are carried out.
13. Ms N did not agree with Aviva's response and she referred her complaint to us for an independent review. Ms N says that she relied on the information given by Aviva during the telephone call on 24 August 2015, including the following statements:
 - "I can't tell you what tomorrow's will be as obviously no one knows until that's closed."
 - "Because it always goes on the close of business on that day."
 - "Well you'll be able to go on the website and have a look."
14. In the context of the overall conversation, Ms N says that she interpreted "until that's closed" and "on that day" to mean the close of business on Monday 24 August 2015. When Aviva said she can "go on the website and have a look", her understanding was that she can check the values on the website at the point of the fund switch.
15. Ms N is seeking the difference between the value of her pension (as showing on Aviva's website during 25 August 2015) and the value that was actually applied to her fund switch.

Adjudicator's Opinion

16. Ms N'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:-
 - Ms N says that her understanding was that the fund switch would be completed on 25 August 2015, using the prices at the close of business on the previous working day, which she could view on Aviva's website at the time of the fund switch. This could not be considered a reasonable interpretation of the conversation that took place on 24 August 2015.
 - Aviva said "so you looked, was it yesterday you looked...so those values would've been the values of the 21st because we take them from the previous

working day.” It is clear from this statement that the values published on Aviva’s website represent the values of the previous working day. The effective date of the fund switch was 25 August 2015, which is not disputed by the parties. It reasonably follows that the prices used for the fund switch would then be published on Aviva’s website on the following day, 26 August 2015. Aviva cannot apply yesterday’s prices to a transaction that is carried out today.

- Aviva said “I can’t tell you what tomorrow’s will be as obviously no one knows until that’s closed” and “it always goes on the close of business on that day.” It is reasonable to conclude from these statements that the values would not be known to Ms N until the close of business on the day of the fund switch. If Aviva had meant the day of the conversation, it is not unreasonable to think that Aviva would instead have said “until today’s closed.”
- When Ms N asked if she could check the prices as they change during the day. Aviva replied “no, it’s just close of business.” Therefore, Ms N should reasonably have known that the prices applied to the fund switch would not be known to her real-time. At one point in the conversation, it seems that she understood the prices would not be known until the following day, when she said:

“This is what I’m not happy with. You should be able to switch on the same day so you know what you’re switching at.”

- Ms N’s understanding, immediately prior to her instruction to switch funds, was not the result of any maladministration by Aviva.

17. Aviva accepted the Adjudicator’s Opinion and made no further comments.
18. Ms N did not agree with the Adjudicator’s Opinion and the complaint was passed to me to consider. Ms N provided her further comments which do not change the outcome. I agree with the Adjudicator’s Opinion, summarised above, and I will therefore only respond to the key points made by Ms N for completeness.
19. In summary, Ms N made the following points:-

- The Adjudicator refers to a number of statements that should allegedly have made it clear to her what the procedure was, but did not consider the equally numerous statements made by Aviva which were contradictory or incorrect.
- The statements relied on by the Adjudicator are ambiguous and should be interpreted in the context of a person’s knowledge and understanding. The Adjudicator did not consider that, at the time of the conversation, her only experience of selling stock was with Interactive Investor, where if the instruction to sell is given before midday on a trading day, it is effective on the same day and the prices are then published after midday. She mistakenly believed this to be standard industry practice

- She was not given clear and unambiguous information, as required by the regulator's Conduct of Business Sourcebook. The conversation took place late in the day, when she was clearly tired and frustrated as she had been unable to access Aviva's online system throughout the day.
- The adjudication makes no reference to the confusion caused by the misleading information from different members of Aviva's staff. It is clear from the questions she had raised at the end of the conversation that there is still confusion, as a result of ongoing contradictions. It is maladministration when an inexperienced, confused lay person's understanding of the procedure is based on incorrect and/or misleading answers to direct questions.
- It would not be logical or reasonable to expect a confused person to make an informed decision based on an interpretation of procedure arising out of conflicting and/or misleading information.
- The effective date of transaction was Tuesday 25 August 2015. Based on her understanding of contract law, there has to be consideration for the transaction to be finalised. In this situation, the consideration would be monies paid and, for the payment to be made, the amount would have to be known on Tuesday 25 August 2015 for the sale to be effective.

Ombudsman's decision

20. Before Ms N confirmed her decision to proceed with the fund switch, she said the following:

"See, I'm happy to switch on what it shows today but I might not be on what it is tomorrow. This is the thing, and even if I leave it till tomorrow, I'm not going to know. Just switch it. Just switch it."

21. It is clear from this statement that Ms N understood, immediately prior to her confirmation to proceed with the fund switch, that she would not know the prices applied to the transaction at the moment the switch is completed. She accepts this as the procedure when she says "even if I leave it till tomorrow, I'm not going to know. Just switch it. Just switch it."
22. It also seems from the above statement that, although Ms N was concerned about the prices that might be applied to the transaction, she was willing to proceed, regardless of when that information would be published on Aviva's website. On the balance of probabilities, I consider it more likely, than not, that Ms N would still have proceeded with the fund switch, irrespective of the accuracy of her understanding of Aviva's procedure at the time of her confirmation. Nevertheless, as I have mentioned above, it seems she did have the correct understanding when she gave the confirmation to proceed with the fund switch.

23. I acknowledge that some parts of the conversation, which took place on Monday 24 August 2015, could have been handled better by Aviva, but they are not material to the outcome of this complaint and have not been referred to in my decision. Overall, I am satisfied that sufficient information was given to Ms N, which should reasonably have made her aware that the values published on Aviva's website are taken from the previous working day, and therefore the prices applied to her transaction would not be known to her before close of business.
24. Therefore, I do not uphold Ms N's complaint.

Anthony Arter

Pensions Ombudsman
16 May 2017