

## Ombudsman's Determination

Applicant	Ms R
Scheme	Aviva Personal Pension Plan ( <b>the Plan</b> )
Respondent	Aviva

## Outcome

1. Ms R's complaint against Aviva is partly upheld, but there is a part of the complaint I do not agree with. To put matters right (for the part that is upheld) Aviva shall pay Ms R £1,000 for the serious distress and inconvenience this situation has caused.

## Complaint summary

2. Ms R's complaint concerns the customer service she received from Aviva. She is unhappy with its delay in following her instructions and, also with the way it has dealt with her complaint. She believes Aviva's actions amount to maladministration.
3. Ms R also believes that Aviva's maladministration rendered any contract she had with Aviva void. Therefore, Aviva should not have charged her an exit fee, when she transferred her benefits from Aviva in July 2018.

## Background information, including submissions from the parties

4. Ms R joined the Plan in 1994. On 16 October 2017, Ms R emailed Aviva to request a copy of her annual benefit statement. She also asked Aviva to provide her with other information, such as details of any exit fees associated with the Plan, and a list of available funds she could invest in. On 18 October 2017, Ms R sent a further email to Aviva, asking it to respond to the email she had sent it two days earlier.
5. On 23 October 2017, Aviva responded to Ms R and provided her with the requested information.
6. On 9 November 2017, Ms R contacted Aviva using its online form and explained that the fund names provided were "...merely categories of funds, not full names". Ms R said she could not "identify them elsewhere", and said she wanted to make a formal complaint.

7. On 3 November 2017, Aviva sent Ms R information about the Plan, such as the list of funds available and a fund switch form.
8. On 11 November 2017, Aviva responded to Ms R's complaint, concerning her not being sent the fund information she had requested. Aviva apologised for not sending the requested information to her initially and said:

"Our records show that a Fund Leaflet was sent to you on 3 November 2017 however I have also requested that our administration team send you a full pack to your home address. This will include funds available to your policy and a performance leaflet of the funds you are currently invested in. This will be sent under separate cover within the next ten days...

I trust that the receipt of the fund information brings the matter to a satisfactorily close. If you feel that we have not addressed all of your concerns or you have additional information for us, please let us know."

9. On 15 November 2017, Aviva sent Ms R further information about the Plan. This included a list of funds she could invest in. On 26 November 2017, Ms R wrote to Aviva and requested a fund switch. She also requested a copy of the Plan's terms and conditions booklet. As she did not receive a response from Aviva, on 29 December 2017, Ms R sent a further letter to Aviva, requesting a fund switch and a copy of the Plan's terms and conditions booklet.
10. On 7 and 15 January 2018, Ms R sent further emails to Aviva asking it to acknowledge receipt of her letters and confirm that it had processed her instructions. She also expressed her dissatisfaction with Aviva's delay in communicating with her.
11. In February 2018, Ms R received letters from Aviva dated 10 January 2018, and 8 February 2018. On 12 February 2018, Ms R replied to Aviva and said:

"I see from your letter that you carried out a fund switch on 3 January 2018. This represents an unacceptable delay in acting on my fund switch instruction, which were sent with my letter dated 26 November 2017. This delay is in addition to the delay in providing me with the information I needed to arrange for the fund switch, which I first requested on or around 16 October 2017 and is a part of the formal complaint I raised on 9 November 2017.

You have not explained the delay in response to my original complaint of 9 November 2017. You have not explained the delay in carrying out my instructions. You have not indicated whether you received and acted on my original letter dated 26 November 2017 or the copy I sent by recorded delivery with my letter of 29 December 2017. You have not explained why you have taken more than a month to advise me of the fund switch on 3 January 2018. You have not provided me with the booklet for my policy, as referenced in your fund switch form, despite numerous requests, most recently in my letter of 26 November 2017. You have not bothered to respond to my emails of 7 and 15

January 2018, directed to the contact email address specified in your letter 15 November 2017, despite promises to respond to customers within 72 hours.”

12. In the same letter, Ms R also informed Aviva that she was disabled and that she felt it had failed her as a customer. Therefore, she had lost confidence in Aviva. To resolve her complaint, she proposed that:

“Aviva agrees to transfer the total bid value of the policy, without exit fees, to another service provider of my choosing at a time of my choosing. Upon receipt of a signed and legally binding undertaking from Aviva to this effect, I will instruct the new provider to make the necessary arrangements and advise accordingly... Aviva will compensate me for the distress and suffering I have experienced as a result of the poor customer service, and the costs incurred in relation to correspondence concerning my complaint against Aviva, in the amount of £500.

13. Ms R did not receive a response to her letter from Aviva, so she referred her complaint to The Pensions Ombudsman.

14. On 22 June 2018, Ms R received a letter from Aviva dated 18 May 2018, which informed her that a further fund switch had been completed. On the same day, Ms R wrote to Aviva and said:

“I am writing further to my letter of 12 February 2018, in respect of which I have received no reply.

In view of your consistent failure to respond to my complaint over the past seven months, I have no option but to initiate a transfer of my pension to another pension provider...As you have repeatedly failed to respond to my request to provide the original policy brochure to justify the amount of your exit fee, I do not expect to be charged any exit fee in the circumstances. In any event, I reserve the right to contest any exit fee charged.”

15. Ms R also informed Aviva that she had received its letter dated 18 May 2018, and it had appeared that a further fund switch had been completed without her authorisation. She asked Aviva to explain why a further fund switch was completed, and why it took over a month to advise her of the further switch.
16. On 13 July 2018, Aviva wrote to Ms R and informed her that it had made arrangements to transfer £185,855.10 to her new pension provider. Aviva did not respond to the points Ms R had raised in her 12 February and 22 June 2018 letters.
17. Following receipt of Aviva’s 13 July 2018 letter, Ms R wrote to Aviva on 20 July 2018, and raised a further complaint. This was because she was dissatisfied that Aviva had not provided her with “...a statement showing the date of withdrawal from the invested funds, the value of the investments in those funds on that date and how the sum transferred was arrived at.”

18. Ms R also asked Aviva to explain the difference in the value of her plan, because the statement she received dated 18 May 2018, showed the value of her Plan was £193,777.04. However, the sum transferred was £185,855.10.
19. On 27 July 2017, Aviva wrote to Ms R and provided a breakdown of the transfer amount that was sent to her new pension provider.
20. On 7 September 2018, Aviva wrote to us, in response to Ms R's complaint. It provided a copy of its letter dated 11 November 2017, which was sent in response to Ms R's complaint concerning problems she incurred while trying to obtain fund information. It also acknowledged that Ms R had not received responses to her 12 February and 22 June 2018 complaint letters, although Aviva had received them.
21. Aviva explained that a 1% exit fee was not applicable to Ms R as she had not yet reached the minimum age of 55. It explained that Ms R's normal retirement age under the Plan was 60, which would have been in 2028. Aviva provided a specimen of the Plan's terms and conditions, which showed that a penalty would apply to the value of the capital units on a sliding scale, if the transfer occurred before the member's normal retirement date. Aviva explained that in this case, the transfer occurred just under 10 years before Ms R's selected retirement date. This meant that, between 68.5% and 65.7% of the capital units would be paid. The deduction of £4,667.47 equates to a deduction of approximately 33.1% of the capital units' value of £14,101.26.
22. Aviva also explained that, in relation to the delayed fund switch, a manual adjustment was applied to the units on the policy, on 26 June 2018, which was prior to the transfer, to accommodate the backdating of the fund switch to 26 November 2017. Therefore, the transfer value correctly reflected Ms R's fund switch instructions.
23. Following receipt of Aviva's 7 September 2018 response, there was further correspondence between Ms R, us and Aviva. Ms R said: -
  - The correctly dated Plan document is unlikely to set out details of the obligations of the Plan provider in relation to customer service.
  - Therefore, the question is - given her age, and the appalling customer service she experienced from Aviva, was it reasonable for her to transfer her Plan from Aviva in the expectation that she would not be charged an exit fee or compensated in the amount thereof?
  - Should she be compensated for the distress and inconvenience this situation has caused her?
24. In addition to what Aviva said in its formal response, Aviva provided copies of the Plan's booklets dated July 1998 and April 2006. It also made the following additional comments: -
  - Ms R's letter of 26 November 2017, in which she requested to switch her funds, was not received until 14 May 2018. It does not know what happened to the letter

between 26 November 2017 and 14 May 2018, but it was not scanned on to its system until 14 May 2018.

- Ms R's letter of 29 December 2017 with switch instructions was not received until 2 January 2018 and the switch was actioned on 3 January 2018.
- When it received Ms R's letter of 26 November 2017, in May 2018, it processed the fund switch without looking at the dates or contacting Ms R to seek confirmation if the switch was to go ahead on that date. However, units were added to Ms R's Plan, on 13 July 2018, to correct the switch error.
- The actuaries calculated the value paid out, assuming the transaction history was put back to the value it should have been if the correct switch was completed on 26 November 2017.
- Ms R's request for her benefits to be transferred was received via "Options on [26 June 2018] and paid by CHAPs/TT" on 13 July 2018. The amount transferred was £185,855.10.
- Aviva does not provide a breakdown of the transfer payment made. It just confirms the value it has transferred and the date it was done. It added interest to the transfer payment for the period while the funds were not invested. It provided us with a copy of its response to Ms R's letter of 20 July 2018, in which it provided the requested breakdown.
- Whilst there may have been subsequent re-prints of the Plan's terms and conditions, Ms R's Plan would have been based upon the July 1998 Plan terms and conditions.
- The amount transferred was lower than the figure Ms R was previously quoted because there are surrender penalties on the transfer, as the Plan was surrendered early.
- The early surrender/transfer fee was applied in accordance with the Plan's terms and conditions. It does not therefore intend to waive all or any part of the fee.
- It does not know why the letters of 12 February 2018 and 22 June 2018 were not responded to as it did receive them. The letters were last looked at after the referral to the Ombudsman had been made. Therefore, Aviva made a decision not to respond to them, as the complaint was being dealt with by the Ombudsman and it did not want to confuse matters.
- Whilst reference was made to her disability, Ms R did not indicate the nature of her disability or that she required Aviva to make any adjustments to the way it communicated with her. However, it accepts that it should have considered if Ms R was a vulnerable customer, sought further clarification of her needs and made any necessary adjustments to the way it communicated with her.

- Although it had not previously considered paying Ms R any compensation for the distress and inconvenience caused, it accepts an appropriate amount should now be offered in line with the Ombudsman's current guidelines.

## **Adjudicator's Opinion**

25. Ms R'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: -

- There was no dispute that Aviva provided Ms R with poor customer service when it failed to follow her instructions initially, and also in the way it dealt with her complaint. In the Adjudicator's opinion, Aviva's actions amounted to maladministration. Therefore, she investigated whether Aviva's maladministration resulted in Ms R incurring a financial loss.
- Ms R originally requested a fund switch in late November 2017, but this was not completed until 3 January 2018. The Adjudicator appreciated that Aviva said Ms R's letter of 26 November 2017, was not scanned on to its system until 14 May 2018. However, in her opinion, the delay in scanning Ms R's 26 November 2017 letter on to its systems was due to Aviva's error.
- In such cases, to put matters right, an Ombudsman would direct Aviva to complete a loss assessment to establish if Ms R had incurred a financial loss as a result of the delay in switching her funds. The Adjudicator noted that Aviva said it completed a loss assessment, prior to the transfer of Ms R's Plan to an alternative company, and that the correct amount was transferred.
- So, in the Adjudicator's opinion, Aviva did what an Ombudsman would have expected it to do, in such circumstances.
- The Adjudicator appreciated that Ms R believed the early surrender fee she paid to transfer her benefits from Aviva to an alternative pension provider should have been waived because of the poor customer service she had received. However, in the Adjudicator's opinion, the early surrender fee was applied to Ms R's transfer in accordance with the Plan's terms and conditions.
- The Adjudicator accepted that Aviva was unable to provide a copy of the terms and conditions for the Plan that Ms R started in 1994. However, it has said that the terms and conditions for Ms R's Plan would have been based on the 1998 terms and conditions. In the Adjudicator's opinion, on the balance of probabilities, the terms and conditions for the Plan Ms R commenced in 1994, would have contained the same early surrender penalty clause. This was because Aviva had also provided a copy of the updated terms and conditions for the Plan, dated April 2006, and the same clause is contained in the updated terms.

26. Therefore, it was the Adjudicator's view that an Ombudsman would not uphold this element of Ms R's complaint as they would not direct Aviva to waive the early surrender fee that was applied to Ms R's Plan. This is because it was applied in accordance with the Plan's terms and conditions.
27. In relation to the customer service Ms R received, in the Adjudicator's opinion, it was below standard and would have caused Ms R severe distress and inconvenience. This was because Aviva failed to upload her 26 November letter on to its system in a timely manner, which led to a delay in completing her requested fund switch. In addition, Aviva failed to respond to several of her letters and, it did not acknowledge that Ms R was a disabled customer and that it should have found out from her, if it needed to make any adjustments in the way it communicated with her.
28. In the Adjudicator's opinion, Ms R should receive an award from Aviva, for the poor customer service she had experienced and the distress and inconvenience it caused.
29. Therefore, it was the Adjudicator's view that this complaint should be partly upheld, and Aviva should award Ms R £2,000 for the severe distress and inconvenience she had experienced.
30. Aviva did not accept the Adjudicator's Opinion as it believed an award of £2,000, for the distress and inconvenience Ms R has experienced was excessive. It believed an award of £1,000 was more appropriate.
31. In response to the Opinion, Ms R made some further points, a summary of which is below: -
  - She does not agree with the Adjudicator's opinion and reiterated details of the poor customer service she had received from Aviva.
  - Throughout her correspondence with Aviva in 2017 and 2018, she had repeatedly requested a copy of the Plan document detailing the contract between herself and Aviva. Aviva ignored those requests and has now claimed that her contract was based on terms and conditions from 1998.
  - However, the terms and conditions Aviva provided is for a self-employed Plan holder. When she started the policy in 1994, she was employed by a company. She then became self-employed in 2000. So, many of the express terms of the terms and conditions Aviva has provided are inapplicable.
  - Aviva has not maintained a copy of the contract she had under the Plan and has attempted to deceive the Ombudsman. Many of the express terms of the terms and conditions Aviva has provided could not have applied in her circumstances in 1994. For this reason alone, Aviva cannot prove any basis for legitimately charging an exit fee.
  - Ms R also provided details of why she believed her contract with Aviva was not enforceable and therefore an exit fee should not have applied, when she transferred her Plan away from Aviva.

32. As neither Aviva nor Ms R accepted the Adjudicator's opinion, the complaint was passed to me. I agree with the Adjudicator's Opinion and I will therefore only respond to the key points made by Aviva and Ms R for completeness.

### **Ombudsman's decision**

33. There is no dispute that Aviva provided Ms R with poor customer service between 2016 and 2018. While it is regrettable that this has been Ms R's experience with Aviva, during the said period, this does render any contract Ms R had with Aviva unenforceable.
34. I appreciate that Aviva has not been able to provide a copy of the terms and conditions for Ms R's Plan as originally printed. However, I find that, on the balance of probabilities, the terms and conditions of the Plan would have included a clause that permitted Aviva to deduct an exit fee from the Plan, and the sliding scale set out in the specimen is the best evidence of the extent of the charge. I say this because it is usual for pension companies to include such clauses in the terms and conditions of pension policies, if the pension is surrendered or, as in Ms R's case, transferred before its maturity date.
35. I find that Aviva did nothing wrong in applying an early exit penalty to Ms R's Plan when she transferred her policy away from Aviva.
36. However, it is plain that Aviva's handling of her correspondence amounted to maladministration. Like the Adjudicator, it is also my view that Aviva's maladministration would have caused Ms R distress and inconvenience. However, I agree with Aviva that an award of £2,000 is excessive in the circumstances.
37. In my view an award of £1,000 is more appropriate to reflect the serious distress and inconvenience Ms R has experienced.
38. So, I partly uphold Ms R's complaint.

### **Directions**

39. Within 21 days of the date of this Determination, Aviva shall pay Ms R £1,000 for the serious distress and inconvenience she has experienced.

**Karen Johnston**

Deputy Pensions Ombudsman  
27 September 2019