

Ombudsman's Determination

Applicant	Mr H
Scheme	Refresh 2016 Retirement Benefit Scheme (the Scheme)
Respondent	Aviva

Outcome

1. I agree that part, but not all, of this complaint is upheld. To put matters right in respect of the part that is upheld, Aviva shall pay the additional rental costs incurred (plus interest); and £800, in addition to the £200 previously paid, in recognition of the serious distress and inconvenience that has been caused to Mr H.

Complaint summary

2. The complaint was originally handled by Friends Life, who are now part of Aviva. Aviva has responded to the complaint brought to the Pensions Ombudsman, as the parent company of Friends Life. Therefore, the respondent is referred to as Aviva in this Determination.
3. Mr H is complaining that:
 - Aviva provided an incorrect banking sort code to Legal & General for the transfer of funds into the Scheme. He claims that the delay caused distress and inconvenience and caused the purchase of a property to fall through;
 - Aviva was unhelpful with the purchase of a previous building via a mortgage with Lloyds Bank; and
 - the customer service and complaint handling provided by Aviva was inadequate.

Background information, including submissions from the parties

4. Mr H is a member and trustee of the Scheme (which is a small self-administered scheme). He decided to transfer in two personal pension schemes, one from Royal London and the other from Legal & General. Mr H wanted to use the funds to purchase a property for his business.

5. On 20 October 2016, Legal & General provided Mr H with a transfer value of £143,855.30 and he signed the transfer discharge forms on 25 October 2016, followed by the Aviva transfer forms on 8 December 2016.
6. At the same time, Mr H began the process of purchasing a property; as part of this, a mortgage was to be arranged through Lloyds Bank. Lloyds Bank emailed Aviva on 14 December 2016, requesting specific information about the Scheme in a set format. Aviva responded on 28 December 2016, but some of the information requested was missing.
7. On 30 December 2016, Aviva signed Legal & General's receiving scheme transfer documents.
8. On 5 January 2017, Lloyds Bank emailed Aviva to request a new response, highlighting the missing information. Aviva provided the requested information on 10 January 2017, and was informed that a different property would be purchased on 26 January 2017.
9. Dr H (Mr H's wife, who is acting on his behalf) telephoned Aviva on 14 March 2017, and gave the Scheme bank account details. Two sort codes were provided.; one general sort code (09-02-21) and the other to be used for automated transfers (16-57-10). Aviva passed on this information to Legal & General. On 17 March 2017, Legal & General emailed Aviva, attaching a signed letter on headed paper, and asked Aviva to provide details of the account into which the funds were to be paid. It asked Aviva to specify which of the two sort codes was to be used. Aviva says it responded on 21 March 2017, confirming that the sort code of 09-02-21 should be used; this was incorrect. The funds were transferred the same day, but into the wrong account.
10. On 9 May 2017, Dr H telephoned Aviva to ascertain into which account the funds had been transferred. Legal & General had confirmed to her that the funds had been transferred to Aviva.
11. Over the next few days emails and telephone calls went back and forth between Dr H, Aviva, Legal & General and Carter Allen (the bank involved). Legal & General put a trace on the funds, but it informed Dr H and Aviva that this could take 10 to 20 working days. Dr H also notified Aviva that a second property was nearing completion, so she asked Aviva to indemnify the funds, should the money not be found in time. Aviva confirmed that this could not be done, as the funds were with Legal & General. Dr H asked for a complaint to be raised, including a complaint about the delays regarding the purchase of the first property.
12. Aviva provided a formal response to Dr H's complaint on 23 May 2017, when Aviva agreed that the incorrect sort code had been provided to Legal & General and apologised for the distress and inconvenience caused. Aviva offered £200 in recognition of this. In relation to the complaint concerning the loss of the first property, Aviva did not agree that it was responsible for any delay.

13. Dr H wrote a further letter of complaint on 5 June 2017. She highlighted the distress and inconvenience caused due to Aviva's actions (including having to spend time chasing the missing funds while on holiday, as well as the stress involved in the property purchase). She did not feel that the offer of £200 acknowledged this. She also outlined her complaint concerning the delay relating to the first property and that this fell through due to the time taken. She was of the opinion that the delay in Aviva corresponding with Lloyds Bank was a contributing factor leading to the failure of the property purchase. She also outlined a general dissatisfaction with the service provided by Aviva.
14. Legal & General confirmed to Aviva that £153,281.44 was transferred on 5 June 2017.
15. Aviva provided another response to the complaint on 14 June 2017. It reiterated its earlier decision, but raised its offer from £200 to £500.
16. Dr H wrote a further letter of complaint, rejecting the increased offer. She outlined the complaints once more and explained that the offer was not enough to recognise the "losses, time spent, stress caused, impact upon our holiday and general dissatisfaction."
17. Aviva replied on 19 July 2017, but did not increase its offer of £300 in additional to the £200 already paid. It also responded to the complaint relating to the delay in providing information to Lloyds Bank, which it did not uphold. It said:

"I appreciate that the response we issued to Lloyds Bank on 28 December 2016 had not fully answered all of the questions we had been asked. Unfortunately this meant that ... had to get back in touch with us on 5 January 2017 to highlight this information which was outstanding. I have attached a copy of my colleague...’s email and letter which were sent on 10 January 2017 in response to this. From the records I have available to me, I have not seen any further contact from Lloyds Bank so would assume that they had received everything they required. Following this on 26 January 2017, we received details of a new property purchase ... and confirmation that the previous property purchase had fallen through, but with no further explanation."
18. Dr H wrote a further letter of complaint to Aviva on 25 July 2017. Aviva responded on 16 August 2017, stating that it appeared the matter could not be resolved and that she should contact the Pensions Ombudsman.
19. After making a complaint to the Financial Ombudsman Service, Mr and Dr H were referred to my Office in March 2018.
20. As part of the investigation, both parties were asked for further information. Aviva was specifically asked for information relating to the transfer and timings, plus further comments on the financial loss claimed by Mr and Dr H. After months of chasing by my Office, Aviva provided a partial response, but failed to respond to Mr H's claims of financial loss because of the transfer delay. However, Aviva did offer to increase the

previous offer of £500 to £700 and to raise with senior management the unprofessionalism in respect of its delay in responding. Following this, further queries were raised, but no response was received.

21. Dr H was asked to provide further details and evidence of Mr H's financial loss. The business involved renting an office and a warehouse; she provided evidence to show that payments were made as follows:

	Warehouse	Office
April 2017	£3,077.86	£736.00
May 2017	Invoice not provided	£1,471.99
June 2017	£1,538.94	Invoice not provided
July 2017	£3,077.89	£1,471.99

22. Dr H confirmed that the property purchase completed in mid-June 2017, and that, for various reasons (including having to give a notice period and the general logistics of moving), they continued to pay rental costs in July 2017.
23. In relation to questions regarding the first property purchase, Dr H was unable to say that there was any particular delay solely down to the actions of Aviva that led to the property purchase falling through.

Adjudicator's Opinion

24. Mr H'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 H's second complaint regarding Aviva's delay in providing information to Lloyds Bank should not be upheld. The Adjudicator's view was that Mr H had been unable to show that the delay (which she felt was relatively short) was not the sole reason for the failure of the first property purchase falling through.
 - Aviva had agreed that the wrong sort code was provided to Legal & General. Therefore, it is responsible for the subsequent delay that occurred. Mr H had a reasonable expectation that the funds should have been transferred in a reasonable period and he suffered serious distress and inconvenience in having to chase and find a substantial amount of money.
 - Based on the information provided, the second property was still going through the purchasing process in early May 2017. The Adjudicator concluded that if the funds had been transferred to the correct account in March 2017, then the new property purchase would have completed in May 2017, rather than in June 2017.

Therefore, Mr H incurred additional expenditure in having to keep his business in rental premises for an additional month. The total additional rental cost incurred was £4,549.88, plus interest.

- The Adjudicator also concluded that Aviva had failed to adequately respond to queries from my Office, or to reply in a timely manner. It failed to fully comment on the financial losses alleged by Mr H, and failed to adequately address the complaint prior to and following the involvement of my Office. This resulted in the complaint process being unnecessarily protracted and hampered its resolution. Therefore, it was the Adjudicator's view that the previous offer of £700 should be increased to £800, which together with the £200 already paid by Aviva, is an award of £1,000, in recognition of the severe distress and inconvenience which has been suffered by Mr H.

Ombudsman's decision

25. Mr H accepted the Opinion and Aviva did not respond, so the complaint was passed to me. I agree with the Adjudicator's Opinion and partly uphold the complaint for the reasons set out above.

Directions

26. Within 21 days of the date of this Determination, Aviva shall:

- pay Mr H an additional award of £800 in respect of the serious distress and inconvenience suffered by Mr H; and
- pay Mr H £4,549.88 in recognition of the additional rental costs incurred as a result of unavailability of the funds, including interest at the base bank rate for the time being, as quoted by the Bank of England from July 2017 until the date of payment.

Anthony Arter

Pensions Ombudsman
11 September 2019