

## The complaint

Mr J says when he asked Aviva Life & Pensions UK Limited (Aviva) to tell him what he needed to do to take the benefits from his personal pension, he was shocked to find out about the poor performance of his plan. He asked it to investigate the matter. He was also concerned about administrative problems that had arisen in relation to his plan. Mr J says Aviva failed to respond properly to his complaint.

## What happened

Mr J started a personal pension plan with Commercial Union (CU) on 8 March 1989. He contributed £20 a month, but only for a relatively short period. The policy was invested in its Managed fund. Later the same year, he also applied to transfer-in benefits from an occupational pension scheme (OPS). His benefits were moved to CU, but it failed to apply these to his new policy.

In 1998, Mr J discovered the problem with the transfer of his OPS benefits. After investigating, CU confirmed it had made a mistake and it provided him with redress to put his personal pension back into the position it would've been in had it completed the transaction properly in 1989. Again his funds were allocated to the Managed fund. It also offered him £250 for the way it had handled matters.

CU merged with General Accident in February 1998 to form CGU, which then merged with Norwich Union in May 2000 to form CGNU. It changed its name to Aviva in 2002. The fund in which Mr J was invested was renamed twice and most recently was called the Aviva Mixed Investment (40-85% Shares) (CU) Pension Standard Series 01 fund.

Mr J told this Service that Aviva didn't have a correspondence address for him. He had moved from the residence he'd previously notified to it in 2011. And all the documentation for his pension plan had been left with his former wife as custodian because in the event of his demise she was the named beneficiary.

Between 2011 and 2019, Aviva continued sending correspondence about Mr J's policy to the address it had on file. Mr J says his wife had also moved out of that address in 2011 because of ill-health.

Mr J says he called Aviva in July 2019 to find out about how he would be able to access his pension benefits. He was planning to do this when he reached 55 the following year. He says initially there were problems because his address hadn't been updated. But this was overcome following a 'soft credit check' to verify his current residence.

Mr J was informed about the value of his pension plan and was shocked by how it had performed relative to some of his other policies. He said:

*"When I took out this policy, it was with Commercial Union Financial Services and I was an agent for CUFS at that time, I also transferred into this policy [OPS benefits], so upon receiving this news of the comparative poor performance, I was shocked and also extremely concerned as I had also set up this type of policy for quite a few people and now I was*

*concerned that others like me would be upset at this poor performance when they come to their retirement.”*

*“I asked for this to be investigated and asked for a copy of all the annual statements for this policy since 2000 so I could see for myself a pattern of how this investment was performing..”*

Aviva’s notes of the calls it took from Mr J at this time indicate that he raised several other concerns. For example, he said he’d been moved to Aviva without his consent and he thought something may’ve gone wrong with his policy following the merger with Norwich Union.

Unfortunately during Mr J’s interactions with Aviva during July 2019, it recorded his updated address incorrectly. As a result, its next three communications were sent to the wrong address. The letters included information about his pension policy, including its value; confirmation of his change of address; and subsequently correspondence informing him that its process for changing his address required a wet signature.

Mr J didn’t receive any of the letters Aviva sent him in July and August 2019. Its own records show these were returned to sender.

Aviva produced a final response letter (FRL) for Mr J about the complaint he’d raised. Amongst other matters, it said that the policy value was correct; that there was no evidence of fraud, theft or mismanagement; and that the policy had been administered in line with the terms and conditions. It confirmed that the policy had been invested in the same fund throughout. It said it couldn’t have known that he hadn’t been receiving his statements.

Aviva’s FRL to Mr J was dated 8 August 2019. However, it wasn’t addressed, presumably because of the issues it had with his details. And so it seems the letter wasn’t sent to him at that time.

Mr J was away from home over the summer of 2019, returning in late September. When he called Aviva for an update on his complaint he was unable to get to the bottom of matters because of the issues with his address. He made several calls between October and November 2019, but things became more complicated when Aviva’s record of his National Insurance (NI) number didn’t match what he told them, raising data protection issues.

On 6 December 2019 Aviva sent Mr J another FRL. It said there was still action he needed to take to confirm his correct address, and it advised what he needed to do. It also summarised its position on his complaint saying:

*“...I feel that I should respond to your complaint without making any reference to policy specific information. On reviewing the information on our records, I do not believe Aviva have made any errors in the servicing of your policy....I’ve also looked through the investigation carried out by one of my colleagues following your original complaint and have come to the same conclusions as they did.”*

On 9 December 2019, following another phone call from Mr J, one of Aviva’s people got to the bottom of the issue with his address and national insurance number. His records were then corrected. Mr J had subsequent contacts with Aviva about his case.

Aviva issued a further FRL to Mr J on 23 January 2020, making the following points:

- There had been some confusion over his address and NI number, for which it apologised. These had been corrected.
- It explained the performance of his pension plan by referring to investment conditions

since 1990. It said the plan had achieved growth of 6.54% per annum between March 2011 and January 2020.

- His pension plan value had been checked with the actuarial team and was correct.
- Aviva had an obligation to make checks during calls to protect its customers.

While Mr J went on to access his pension benefits of around £8,120 in March 2020 as he'd wanted to do, he hadn't been satisfied with Aviva's response to his complaint.

Mr J had a number of concerns about what had happened, for example he said Aviva hadn't explained what had caused the problems with his address and NI details. He thought its explanation of his fund performance was inadequate and wrong.

Mr J told this Service he was shocked when he discovered the value of his Aviva pension, this was significantly below his expectations which caused him concern. The problems he experienced in relation to his address and NI number exacerbated his anguish, he even thought his benefits were being stolen.

Mr J says that Aviva's customer service had been disgraceful. One example of this had been its FRL of 6 December 2019 in which it had failed to address his substantive complaint points. This meant he had to be proactive in engaging with it again to try and get to the bottom of what had happened.

The Investigator considered the key elements of Mr J's case including, the merger and acquisition activity of the various entities that provided his pension plan; the performance of his plan; issues around his address and NI number details; data protection issues; and the customer service he received.

The Investigator upheld certain aspects of his case. In particular he found issues with Aviva's handling of Mr J's address and NI number details. He also concluded there were deficiencies in the service it gave Mr J. Aviva accepted the Investigator's findings and conclusions.

The Investigator recommended Aviva pay Mr J £300 for the distress and inconvenience it had caused.

During the time Mr J's complaint had been with this Service, Aviva also discovered an error with the charges it had made against his fund (these should've been capped at 1% from April 2001). It hadn't made annual adjustments between March 2002 and March 2011, and so Mr J was owed about £365. The Investigator thought interest of 8% simple should be added to this payment (net of any tax due) from the date Mr J took his pension benefits until it settled.

Mr J didn't agree with the Investigator. He questioned a number of aspects of his findings including his assessment of the performance of his plan. He said much of the Investigator's view had been based on opinion and not fact. And he said that no amount of compensation could ever give him back the time he'd spent trying to resolve problems with Aviva.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

While I recognise Mr J's desire for a factual approach, rather than one based on opinion, where there's conflicting information about what happened and gaps in what we know, my

role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr J's complaint. I'll explain why.

The first thing I've considered is the extensive regulation around transactions like those performed by Aviva for Mr J. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2 - which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3 - which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.
- Principle 7 - which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Aviva. As such, I need to have regard to them in deciding Mr J's complaint.

Aviva failed Mr J in a number of areas.

For example, when taking details about his current address in a call in July 2019 it recorded the information incorrectly. It seems it also failed to let him know of any further process requirements to formalise the change at that time. This error resulted in several significant impacts including:

- Non-receipt by him of correspondence about his pension policy and the requirements Aviva had in relation to confirming his change of address details.
- It seems although Aviva had produced an FRL for Mr J in August 2019 about the complaint he'd raised a month earlier, this was never sent to him because of the issues with his address. So, he wasn't informed about its position as quickly as he should've been.
- Mr J was already concerned about the position on his pension plan, the issue with his address led to his increased anxiety about what was happening. It also contributed to what became troubling phone exchanges between the parties.

It wasn't until December 2019 that Aviva gripped the situation and got to the bottom of what the problem was. I think this was too long. It had access to call recordings where it could've checked what Mr J had told them about his address in July 2019 and how this had been verified. Not only should something have been apparent from the pattern of calls it was receiving from Mr J, it also knew its letters were being returned from the incorrect address.

During Mr J's interactions with Aviva another problem arose with his personal information – this time the record of his NI number. This again was Aviva's responsibility. It told this Service:

*“Regarding the National Insurance Number, it appears that previously, Aviva did have [Mr J's] National Insurance Number correctly showing. However there seems to have been an issue when the computer systems were upgraded and a ‘placemaker’ ...was input incorrectly by the system (ie ZZ999999Z).”*

While this issue was resolved at the same time as his address being properly recorded, this additional problem with his personal data led to further barriers being erected between him and Aviva. This heightened his confusion, frustration and concern about what was happening with his pension.

While Aviva clearly has a responsibility to its customers to protect personal information and ensure it's talking to the right people, it was responsible for the problems with recording Mr J's address and his NI number. It should've resolved these matters much more quickly. And it should've acknowledged the problems to Mr J, identified how these had arisen and apologised.

Turning to matters of customer service. I think Aviva failed here in a number of areas as well. For example, in its short FRL to Mr J of 6 December 2019, it didn't address his main complaint points. It made reference to a previous investigation, the outcome of which it seems Mr J couldn't have been aware of and which it should've known he hadn't seen. And it asserted that it had made no errors.

This was a poor communication from Aviva. It led to yet further angst for Mr J, who had yet again to try and engage with it about what was happening with his pension.

Mr J isn't blameless for how matters proceeded between him and Aviva. And as the Investigator noted:

*“According to Aviva's notes, Mr J said on 11 July 2019 that he would keep calling back and be nasty to people, and although he said during the next call that he didn't want to discuss the complaint on the phone, he called Aviva numerous times subsequently, and there was little practical purpose to some of those calls. So it could be argued that he caused a lot of his own distress and inconvenience in effect, and that he shouldn't be compensated for it.”*

I've listened to a number of the calls he had with Aviva staff between July 2019 and January 2020. Many of these were very difficult. While it's clear he was frustrated, angry and worried about his pension, there can be no excuse for some of the things he said to staff. While he's acknowledged that he didn't behave well on occasion, I think this is an understatement.

I'm mindful that some months after his initial contact with Aviva he did share that he had a medical condition that caused him to get very stressed and upset easily. This may've helped it understand why the problems he was experiencing caused him significant stress and affected his behaviour.

Perhaps it would've been better for both parties had Mr J shared information about his situation earlier. But equally, I can't see that when he did disclose this information that Aviva's approach altered. The Investigator noted that he seemed to be able to get on better with one individual in particular and that potentially a helpful approach would've been to try to manage communications through that channel. I think there's merit in that suggestion. And certainly, I think it could've done more to consider his needs better.

Next I've thought about the issues Mr J raised about the performance of his pension policy.

I note Mr J compared the performance of his Aviva policy to other pension plans he held. He didn't provide details, such as the different fund investments, charging regimes and contributions made to his plans. Without this data it's not possible for me to comment on whether such a comparison is appropriate. There are many variables to consider when conducting such an analysis. As a former financial adviser he will understand my point.

Aviva said Mr J had stopped making contributions to his plan soon after it had been established. He had chosen how to invest his funds when the plan was set-up. And he'd had the opportunity to select different funds, depending on his risk appetite throughout the lifetime of the plan. It said that since March 2011 his pension fund had achieved an average annual return of just over 6.5%.

Although I don't think Mr J received Aviva's first FRL of 8 August 2019, it's worth noting it confirmed his pension plan had been administered in line with the terms and conditions. It also said the value of the fund had been checked by its actuarial department.

The Investigator looked into the position with Mr J's fund and found that it had performed broadly in line with its sector. The fact sheet he reviewed showed it had underperformed the sector by 2.9% in total over five years but outperformed the sector by 2.18% in total over the previous ten years. He thought Mr J's stated expectations for the fund had been unrealistic.

This Service wouldn't usually consider complaints relating purely to fund performance, fund managers' decisions will not always pay off, and investors have to accept that risk. From the available information, I've not found anything obviously wrong or concerning about Mr J's Aviva fund value or related calculations.

Finally, Mr J voiced concerns about possible data mining by Aviva staff when he interacted with some of them. As this appears to have been an issue of correct process, and not an issue that has caused or contributed to financial loss, if he wanted to pursue this matter it would be better dealt with by the Information Commissioner's Office.

## **Putting things right**

When I'm considering a complaint like Mr J's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of Prudential's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here. But I also need to be mindful of the complicating factors in this case, in particular Mr J's behaviour and Aviva's response to that.

On balance, I think an award to Mr J of £300 for the trouble and upset Aviva caused is fair.

I understand that Aviva may already have settled with Mr J for the money it owed him for taking around £365 too much in charges from his plan between 2001 and 2011. It is also required to pay interest on this sum at 8% simple from the date his retirement benefits were paid to the date of payment of redress. If Aviva considers that it is required to deduct tax, it should provide a tax deduction certificate so that Mr J can reclaim any overpaid tax.

### **My final decision**

For the reasons I've already set out, I'm upholding Mr J's complaint and require Aviva Life & Pensions UK Limited to put things right in the way I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 19 May 2022.

Kevin Williamson

**Ombudsman**