

The complaint

Mr L says Aviva Life & Pensions UK Limited (Aviva) was responsible for a delay in switching his pension to Canada Life and that this caused the transfer value to fall by around £4,000.

What happened

Timeline of events

My starting point is to establish a timeline of events for the transaction Mr L complains about. This has been constructed using information provided by him and Aviva. As there is broad agreement about what happened, I think it provides a reasonable foundation from which to draw my findings and conclusions:

1 June 2022 – Mr L called Aviva asking for information on transferring his pension.

13 June 2022 – Aviva posted Mr L transfer discharge forms.

20 June 2022 – Mr L called Aviva to discuss the transfer of his pension. During the call its adviser said the transaction could be done through the Origo electronic system. This was incorrect because his policy was in draw-down. It notified him by email the same day about its mistake and said it had arranged for transfer discharge forms to be sent to him.

27 June 2022 – Aviva received a transfer request from Canada Life via Origo.

08 July 2022 – Aviva message Canada Life asking it to update the ceding policy reference number which had been keyed incorrectly.

14 July 2022 – Canada Life corrected the policy reference number and sought confirmation that matters could now proceed.

15 July 2022 – Canada Life called Aviva for an update.

20 July 2022 – There were exchanges between teams at Aviva as they tried to get to the bottom of what was happening with the transfer of Mr L's policy. Because the request had been made via Origo this complicated communications and next steps. Given the problems being experienced Mr L wanted the fund value frozen until the switch had been completed.

21 July 2022 – Mr L called Aviva to complain about the delays he'd experienced, highlighting the impact on his fund value. The switch was completed the same day. Aviva says it paid over about £217,800 (using the fund value from 14 July 2022, when Canada Life had corrected the policy information detail) plus around £100 interest.

The basis of Mr L's complaint to Aviva

Mr L had concerns about what had happened and he raised a complaint with Aviva on 31 July 2022 in the following terms:

"The request for transfer was made on Monday 27th June 2022. We know this to be the case because Aviva responded to the new provider advising that one digit was incorrect in the submission. The policy value on this day was £221,926."

"I made several subsequent calls to Aviva about this, my number was taken and a call back" by 9.15am tomorrow" was promised. No further communication was received, other than the

message that I should make the new provider aware that the funds cannot be transferred by Origo and without completion of forms. The £217,920 was subsequently transferred by Origo and no forms have ever been received.”

“I have lost £ 4000 through procrastination, incompetence, misinformation and delay.”

Aviva’s response to Mr L

Aviva apologised for its handling of Mr L’s pension transfer and offered him £200 in recognition of the things it had got wrong. In its final response letter to him of 22 September 2022 it said:

“I apologise we didn’t provide adequate service during your transfer out. You called us on 20 June 2022 to request information about transferring your policy. We told you incorrectly we can facilitate the transfer via the Origo system. We don’t offer transfers via the Origo system for policies in drawdown.”

“We received a full transfer request via Origo on 27 June 2022. The receiving provider didn’t quote the correct policy reference number in the original request. The receiving provider updated the Origo system on 14 July 2022 with the correct reference number. We can’t guarantee the value of the policy when transferring. We need to use the value date of the policy when all our requirements are met, which was 14 July 2022 in this case. Although we don’t transfer policies in drawdown via Origo, we transferred your policy on 22 July 2022. We added late payment interest on the transfer of £92.97 to mitigate financial loss because of the payment delay.”

“I apologise for the service we provided during your transfer, and for not giving you call back as promised.”

“I’m sorry your policy’s value has gone down recently. I completely understand why you’re unhappy about this. I realise it must seem like a very sudden and steep drop. This is part of how investments like yours work, and I’m afraid the drop in value is correct and fair, so we can’t change what’s happened. Your policy’s value can change at any time, without notice. Your policy was invested in the Aviva Managed fund. The fund performance is directly linked to the market performance, which results in the value changing daily...”

The Investigator’s findings and conclusions

Mr L didn’t accept Aviva’s response and brought his complaint to this Service. An Investigator considered his case but didn’t uphold it. She thought there was never any guarantee associated with the transfer value of his pension plan. She thought Aviva had done enough to put right the things it had got wrong. Mr L disagreed. He thought Aviva hadn’t provided proper compensation for what had happened.

As both parties couldn’t agree with the Investigator’s findings and conclusions, Mr L’s complaint was passed to me to review afresh. I issued my provisional decision last month. I’ve considered the final submissions received but these haven’t caused me to depart from my initial findings and conclusions.

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.

Where there’s conflicting information about the events complained about 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 L'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 L. 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 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. As such, I need to have regard to them in deciding Mr L's complaint.

My next step would usually be to review the terms and conditions of Mr L's pension plan with Aviva, specifically with regard to how it would handle client instructions for transfers and timeframes (service levels). Aviva hasn't provided such.

I think it's useful to understand what service levels firms should be aiming for when switches take place between providers. In this regard the sector best practice issued by the Transfers and Re-registration Industry Group (TRIG); whose membership included several trade bodies is instructive. In 2018 it published an Industry-wide framework for improving transfers and re-registrations. It noted:

"When moving investments, assets and entitlements between institutions, people have a legitimate right to expect the industry to execute their instructions in a timely and efficient manner. Furthermore, customers' service expectations are increasing due to the relative simplicity of switching in other markets. Slow transfers can cause detriment to customers; and the actions of one party can reduce the efficiency of all parties in the chain."

In this publication TRIG established what it considered to be reasonable timeframes for firms to adhere to for transactions like those being performed for Mr L. At paragraphs 30-32 the best practice guide said:

"The TRIG believes that organisations should adopt a maximum standard of two full business days for completing each of their own steps in all transfer and re-registration processes within the scope of this Framework, with the exception of pension cash transfers..."

"This approach would enable each counterparty in a process to be equally accountable for ensuring that an efficient transfer and reregistration process is in place. Similarly, organisations will not be accountable for the underperformance of counterparties that are outside of their control."

"This window would comprise two full business days, with a 'business day' defined as a day when the London Stock Exchange is open. Each firm would process its step by 2359 of the

second business day following the day of receipt. This means that, in practice, some firms might have more than 48 hours to process their step, e.g. if they received an instruction at 0900 on day one, and did not complete their step until 2300 on day 3.”

It is also important to note that TRIG understood the need for some flexibility. At paragraph 34 of its publication it said:

“There will be some circumstances where it is not possible to complete a step in this timescale. No exemptions from the standard apply as tasks should still be undertaken as quickly as possible but for specified reasons, counterparties could be allowed to ‘stop the clock’ on a particular step. Where this ‘stop the clock’ legitimately occurs, this should not be cited as a reason for causing unnecessary delays or maintaining inefficient practices. Circumstances where this practice might be appropriate will be very limited and we expect their use to be measured and monitored.”

While TRIG noted the importance of using electronic means, it also acknowledged that certain elements of certain transactions would continue to require manual processes. Where postal services were involved it indicated that the timeframe for each step would require at least one extra day.

In responding to a request from this Service for further information about its approach to the transfer of Mr L’s pension, Aviva said:

“...the [transfer] was not done via Origo. We were able to take the information for the transfer from the received Origo request, but were unable to complete the transfer via Origo. This was received 27 June, and finally updated by the receiving scheme with the correct ceding reference 14 July. Therefore we used the correct price date of 14 July 2022 which was when the final requirement was met.”

“The physical transfer happened 21 July as the amount had to go through 2 levels of checks due to its size. We paid interest at 1%+base rate which is our standard. No loss assessment was done because no delays were apparent. We received the transfer request via Origo (which would have been quicker than by post which would have required documents being sent between us, the customer and new provider and back again and then on to us) and because we couldn’t facilitate via Origo didn’t cause any delays.”

“It took the customer 5 business days to get the receiving scheme to send an Origo request which was not complete. It then took the receiving scheme a further 5 business days to correct this – at which point the fund was in effect frozen as this was the price point used. Between this we took 9 business days to request the correct information. So a total of 19 business days in total.”

“We don’t deem 5 business days as a delay in making the payment (14 to 21 July) as we used the correct price date and paid interest.”

Aviva’s position then is that if Mr L had been required to follow its normal paper based process for drawdown arrangements, where his transfer documents would’ve passed between it, Mr L and then on to Canada Life, and back through the same chain, this would’ve taken longer than what actually happened in his circumstances.

If I assume 3 working days for each leg of that process, which is tight, and assuming the forms had been sent to Mr L on 20 June, then I arrive at 13 July 2022. Aviva transferred Mr L’s funds at its value on 14 July 2022.

Mr L says he never received nor completed any transfer documentation. So his position is the transfer must have happened via Origo. As such he points to the significant delay between when Aviva received the switch instruction from Canada Life via that system on 27

June 2022 and his funds were passed across on 21 July 2022. He says during that period the value of his funds fell by £4,000.

I understand Mr L's argument, but I have to consider that:

- Although he was mis-informed on 20 June 2022 the Origo system could be used for his transfer, he was informed later the same day this wouldn't be possible because his pension was in drawdown.
- Aviva says the switch didn't happen using the Origo system, but that because of the problems it had created it found a way internally to effect the transfer by using information provided through the system. It could be said to have found a work-around that avoided further delay to Mr L.
- Aviva wasn't responsible for all stages of the end-to-end process, it's important to consider the role of other parties in the transfer.
- I'm mindful that although Mr L's Aviva funds suffered a loss over the period, assuming his investment strategy was broadly similar to his new arrangement with Canada Life, then it's possible he'd have experienced the same market movements.
- Aviva did accept responsibility for failings in its handling. It accepted it had all the necessary details to have effected the switch of his pension on 14 July 2022, so the transfer value was taken at that point. To this it added interest at 1% above the Bank of England base rate for the period of delay in getting his funds to the new provider. And it offered him £200 for the trouble and upset it had caused him.

Having considered these matters in the round, I do think Aviva needs to go a little further in rectifying Mr L's position. I say this because it acknowledges it took 9 days from receipt of Canada Life's switch instruction in Origo on 27 June 2022 until 8 July 2022 for it to note the incorrect policy details and to request correction.

So, I think it's reasonable to assume Aviva should've picked up on Canada Life's Origo instruction more quickly, say by 30 June 2022, or 6 working days earlier. It could've then put in train the actions which followed. As such I've concluded that a reasonable notional date for when Mr L's Aviva pension should've transferred to Canada Life is 6 July 2022.

Putting things right

I'm upholding Mr L's complaint, so he needs to be returned to the position he'd have been in now, or as close to that as reasonably possible, had it not been for Aviva's failings.

Redress isn't always a scientific matter. I understand Mr L would like to be paid the £4,000 he says he's lost as a result of Aviva's actions. But I remain of the view the framework I've set out below is fair and reasonable.

Financial loss calculation required

I require Aviva Life & Pensions UK Limited to assess what Mr L's notional position would be now had it provided a more effective service. In doing so it should assume his pension transfer completed on 6 July 2022. This is value A.

Aviva Life & Pensions UK Limited should then assess Mr L's position as it stands, for the relevant funds within the scope of this dispute, so making adjustments for any additional contributions or withdrawal of monies that he's made, so as to arrive at a like for like comparison. This is value B.

If value A is greater than value B, Mr L has suffered a financial loss. Aviva Life & Pensions UK Limited will be required to make good this sum, less any redress it has already paid. It will need to do so within 28 days of being notified that Mr L has accepted my final decision. After this it will need to add 8% simple annual interest on the outstanding sum.

If value B is greater than value A, Mr L hasn't suffered a financial loss and Aviva Life & Pensions UK Limited will just need to give effect to my provisions for distress and inconvenience (as set out below).

Aviva Life & Pensions UK Limited should provide Mr L with a breakdown of the redress calculations in a clear and simple format.

Distress and inconvenience

When I'm considering a complaint like Mr L'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 a firm's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Aviva Life & Pensions UK Limited accepted it got things wrong for Mr L and that its failings had caused him trouble and upset, such as the worry about the impact on his pension fund. It offered him £200 for this. I think that award is fair and it should honour that payment if it hasn't done so already.

My final decision

For the reasons I've outlined, I'm upholding Mr L's complaint. I now require Aviva Life & Pensions UK to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 16 May 2023.

Kevin Williamson
Ombudsman