

The complaint

Mrs W complains that Aviva Life & Pensions UK Limited failed to correctly process an instruction for the partial transfer of some ISA savings she held with another provider.

What happened

Mrs W has been assisted in making the transfer, and this complaint, by her financial advisor. But in this decision, for ease, I will generally refer to all communication as having been with, and from, Mrs W herself.

Mrs W holds investments in an ISA account with Aviva. And she also holds investments in an ISA with another firm that I will call L. In September 2022 Mrs W requested Aviva to transfer the cash equivalent of half of the investments she held in her ISA with L into the ISA that she held with Aviva.

When Aviva processed Mrs W's request it used the Origo Options automated system. But it made an error in the transfer instruction it sent to L. Aviva asked L to transfer the entire value of Mrs W's ISA account rather than just half as she had requested. Aviva noticed its error around 2 minutes later and sent a cancellation of its instruction to L. But L says that cancellation wasn't received.

Aviva wasn't able to request a partial transfer using the Origo systems. So it asked Mrs W to complete a paper instruction. It sent that new request to L on 13 September. But L says that by that time it had already sold Mrs W's ISA investments, and started the transfer to Aviva of the whole value. So it says it rejected the partial request it received from Aviva.

A payment relating to the value of the whole of Mrs W's ISA was sent by L to Aviva on 16 September. Then there were then a number of discussions between Mrs W, Aviva, and L about the best way to deal with the return of the excess funds that had been sent. Aviva invested half of the transferred amount in line with Mrs W's instructions on 30 September. And the excess funds were returned to L on 20 October.

Mrs W raised complaints against both Aviva and L that have been considered by one of our investigators. She was satisfied that L hadn't received the cancellation instruction from Aviva. So she thought that the fault for this problem lay with the incorrect instruction originally sent by Aviva. So she asked Aviva to pay some compensation to Mrs W in respect of the time that her ISA savings had been left uninvested. And she asked Aviva to pay Mrs W £150 for the inconvenience she had been caused.

Aviva didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mrs W accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs W and by Aviva. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I think the basic facts behind the complaint are not in dispute. The instruction that Mrs W gave to Aviva was for a partial transfer of the ISA savings that she held with L. Aviva made an error when requesting that transfer and instead asked L to transfer the entirety of the ISA that Mrs W held with the firm. But Aviva has shown that, within a matter of two minutes, it identified that error, cancelled the transfer instruction, and later issued a new correct instruction using a paper application form.

But the matter at the heart of the problems that Mrs W faced was whether the cancellation instruction Aviva sent was reasonably received by L. L says that it wasn't and the extracts I have seen from its systems, provided in response to Mrs W's complaint against that firm, would support that assertion. And it doesn't seem that Aviva took any steps to follow up the cancellation request, perhaps by phone call or email, to ensure that it had been safely received by L.

I don't know why L did not receive the cancellation request that Aviva sent for the original transfer instruction. It might be that Aviva failed to correctly enter the cancellation into the Origo system. It is possible that the Origo system failed to send that cancellation to L. Or it is possible that L's own systems failed to correctly apply a cancellation that was provided by Origo. But I do not think, with the powers I have in dealing with this complaint, that I will be able to reach any reasonable conclusion as to why L's processing systems didn't show Aviva's instruction as being cancelled and in particular where the responsibility for that error lies.

But what does seem clear is that if Aviva had not made an error in the first place there would have been no incorrect instruction to be cancelled. And Mrs W's transfer would have completed correctly using the paper application form that she was later asked to provide. I've thought carefully about the evidence of actions of other parties like L and Origo. But overall I'm not persuaded there's evidence which would mean it's fair to remove or reduce the degree to which Aviva is liable for the losses Mrs W suffered as a result of the erroneous transfer.

I think that L being asked to transfer the whole of Mrs W's ISA savings has led to her losing out in two instances.

Before the transfer could take place L needed to sell all of Mrs W's ISA investments. Had Aviva correctly only requested a partial transfer, only some of Mrs W's investments would have been sold. So there is a period of time, between the original sale on 12 September and the funds being returned to L on 20 October, that portion of Mrs W's ISA savings were not

invested. It is possible that, due to market movements, Mrs W was able to purchase fewer units than she originally held, when her funds were reinvested.

And I am persuaded that there was a delay in the funds that were correctly transferred being reinvested by Aviva whilst discussions were ongoing about how the problems could best be resolved. Aviva invested Mrs W's transferred the monies on 30 September. I think that, had nothing gone wrong, that investment might have taken place at least 10 days earlier. I accept that Mrs W would have needed to complete a paper application form, but there wouldn't have been any delays whilst discussions were ongoing about the return of the additional funds. So there is a period of time where this portion of Mrs W's ISA savings were not invested. And it is again possible that, due to market movements, Mrs W was able to purchase fewer units than she would have done, had her funds been invested earlier.

It seems likely that these problems will have caused a degree of distress and inconvenience to Mrs W. She will have needed to discuss the problems at length with her financial advisor in order to agree the way forward. And she will undoubtedly have been concerned about any losses her ISA investments might have incurred. So, like our investigator, I think Aviva should pay Mrs W £150 for that distress and inconvenience.

Putting things right

I think that, had nothing gone wrong, Mrs W's ISA investments might be different in value to what they are now worth. So to put things right Aviva should;

- **For the half that should have remained with L.** Aviva should calculate the notional value that Mrs W's ISA with L would have been worth at the date it settles the complaint, had the disinvestment not taken place and the partial transfer carried out as intended. It should take into account any subsequent changes to the portfolio Mrs W has made. It should compare this notional value to the actual value of Mrs W's ISA with L on the date it settles the complaint. If the notional value is greater than the actual value, Mrs W has suffered a loss and Aviva should compensate her by paying an amount equal to the difference in value..
- **For the half that were transferred to Aviva.** Reconstruct Mrs W's ISA holdings to reflect how they would have been had the transferred funds been invested ten days earlier taking into account any changes that Mrs W has subsequently made. If the value of that reconstructed portfolio is greater than the current actual value, Mrs W has lost out and should be paid compensation equal to the difference.

Any compensation should be paid Mrs W as set out below within 28 days of her acceptance of this final decision. Should the compensation not be paid by that date Aviva should add simple interest at a rate of 8% per annum to any compensation from the date of this final decision to the date of settlement. HM Revenue & Customs requires Aviva to take off tax from this interest. Aviva must give Mrs W a certificate showing how much tax it's taken off if she asks for one.

Mrs W has indicated to us that she would prefer any compensation to be added to her ISA with Aviva. Aviva should liaise with HMRC to confirm whether it agrees the compensation can be paid by Aviva, and not treated as an additional subscription, since it is due to an error by the firm. Should HMRC consider that the compensation must be treated as an additional subscription, Aviva should contact Mrs W to confirm whether she has sufficient annual ISA allowance remaining. If not, the compensation should be paid directly to her.

Aviva should additionally pay Mrs W the sum of £150 in respect of the distress and inconvenience this matter will have caused to her.

My final decision

My final decision is that I uphold Mrs W's complaint and direct Aviva Life & Pensions UK Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 2 April 2024.

Paul Reilly
Ombudsman