

## **The complaint**

Ms B complains that, because of Aviva Life & Pensions UK Limited's (Aviva) actions and delays in transferring her pension benefits to another provider from September 2022, she had to withdraw them as an Uncrystallised Funds Pension Lump Sum (UFPLS). She says this has caused her a financial loss (on the pension fund) and meant she had to pay additional tax on the proceeds. She would like this loss to be reimbursed.

## **What happened**

Ms B, who is a resident overseas, held a pension with Aviva which she took out in 1994. It contained a mix of protected and non-protected rights and she made personal contributions until June 2004.

Ms B says she first approached Aviva to withdraw her pension benefits in August 2021 when the value of the plan was £64,051.53. Aviva issued her with a retirement pack and Ms B says she engaged an adviser to deal with the transfer of her benefits to another provider. She says she wanted to take her tax free cash (TFC) from the plan because it was to be used as a deposit on a property purchase. However, Aviva says it has no record of that transfer request being made to it.

Subsequently when Ms B was advised that because of her residential status she couldn't withdraw the benefits unless she transferred to a different provider, she engaged another adviser who made a request for information about her plan to Aviva on 28 April 2022. Ms B signed the relevant paperwork with that adviser to transfer her pension on 27 May 2022. This transfer was received by Aviva on 27 September 2022 through the electronic transfer request system (Origo). Aviva says it didn't pick up the request until 26 October 2022 and noted that additional proof of identity documents would be required but didn't make a request to Ms B.

Ms B says she was made aware of the need to provide that information on 17 November and then contacted Aviva on 24 November 2022 when she said she would provide a copy of her passport – which was received the same day. But Ms B didn't hear anything further from Aviva about the transfer, so on 9 January 2023 she contacted it and, understanding that her transfer hadn't progressed at all, decided to take her benefits as an UFPLS.

She complained about these delays in transferring her funds and Aviva accepted that it had failed to ask her for proof of identity on 26 October 2022 and hadn't responded to her following her call of 24 November 2022 – so it offered £150 as compensation.

The process of paying Ms B's benefits as an UFPLS then began and was finally completed on 20 February 2023. I've seen a note on Aviva's systems which confirmed she would receive £43,485.81 after it had deducted the appropriate income tax. After the payment was made Aviva considered a further complaint about any investment losses suffered as a result of delays in paying the UFPLS. It noted that the fund value had increased between Ms B's original instruction on 9 January and its payment of 20 February 2023. So it didn't think she had suffered any financial loss, but it increased its initial compensation payment to £350 to

cover the delay in replying to her emails and its delay in completing a loss assessment.

Ms B didn't accept the offer. She said that when she contacted Aviva in January 2023 and discovered the fund was no closer to being transferred – and with the deposit on her house purchase due soon, she had no option other than to withdraw the entire funds into a bank account. She said she had suffered “immeasurable stress” and had been financially disadvantaged by a fall in the value of her fund from when it should have been transferred to when payment was made. She also complained about the tax she'd had to pay on the UFPLS as opposed to the tax free element she would have got from a transfer of her benefits to another provider. She thought she'd been disadvantaged by £21,813.93 – and so said the offer of £350 compensation wasn't acceptable.

Aviva didn't respond so Ms B brought her complaint to us. One of our investigators looked into the matter and said she didn't think Ms B had suffered a financial loss, but Aviva had caused delays to the transfer process for which she thought the offer of £350 compensation was fair and reasonable. She said that ultimately Aviva hadn't told Ms B to withdraw her funds using an UFPLS in January 2023 – that was a decision that Ms B made for herself.

Ms B didn't agree. She said that she'd tried from June to November 2022 to transfer the plan and that request ought to have been completed in around eight weeks. So she thought Aviva's delay meant her need to withdraw the funds became urgent and led to her having to consider an alternative option – through no fault of her own. She said that if she wanted an UFPLS she could have asked for that option in May 2022, which indicated her preferred method of transferring her funds in order to release the TFC. She said if Aviva had been able to demonstrate that it could still have carried out the transfer in a timely manner after November 2022 she would have continued with the process – but it was unable to do so.

She didn't think her reason for drawing the funds should have had any bearing on how long the transfer took. She thought Aviva had a responsibility to process the transfer in a timely manner regardless of her reasons. She also didn't accept the level of compensation that had been paid reflected the level of stress she suffered from Aviva's inability to respond to her emails, its lack of action, or its requests for her to resubmit paperwork that had already been provided.

As no resolution could be found the complaint was passed to me to review.

#### My provisional decision

I issued my provisional decision on 23 November 2023. Here's what I said:

*“In her complaint to us Ms B said that her dealings with Aviva in trying to transfer her benefits dated back to August 2021. She referred to a transfer request an adviser had made for her around that time. While Aviva acknowledged that it received a telephone call from Ms B on 17 August 2021 – and issued a retirement pack three days later – it hasn't got any evidence to support the claim that a transfer request was ever made to it.*

*So I asked Ms B if she could provide any evidence to support that claim, but she hasn't been able to demonstrate that a transfer request was actually submitted to Aviva. I don't dispute what Ms B says about her interactions with an adviser or that a transfer was discussed, and she has been able to confirm the name of the provider that was to be used to receive the transferred funds. But I haven't seen anything to support the claim that Aviva was in receipt of a completed transfer application and therefore I can't reasonably say that Ms B's journey to transfer her funds began with Aviva at that time.*

*I note Aviva has provided us with a note from 12 October 2021 which states that Ms B “called as she has been in contact with a well recommended FA who has told her we can pay the TV out without tax as she is not a UK resident. Advised this is not true as HMRC apply tax code on pay out and we have no control over tax amount. PH needs this confirmed in writing asap, 2 working days.” So I think it’s conceivable that this information may have alerted Ms B’s adviser to a possible change of direction and led to it not actually submitting the transfer request.*

*But even if that assumption is wrong, Aviva says that it received a letter of authority from Ms B’s adviser in May and then a transfer request on 27 September 2022 through the Origo system. So I’ve begun my investigation of whether Aviva caused any unnecessary delays from that time. I’ve also gone on to look at what I think should have happened from that point as well.*

*There’s no dispute here that Aviva received a request from another provider to transfer Ms B’s plan on 27 September 2022. I’ve seen a screenshot of that request on the Origo system. So Aviva was aware of the transfer request on that date. Thereafter we know that Aviva didn’t start work on the request until 26 October 2022, when it identified that there were outstanding requirements on the case – namely ID verification and the completion of a SIPP questionnaire. But it didn’t make Ms B aware that it required that information until 17 November 2022.*

*So we asked Aviva to provide reasons for these delays which amounted to around six to seven weeks in total.*

*It told us that, “we received the request for transfer on 27 September 2022, we did need to issue a SIPP questionnaire, and ask for AML documents. When issuing a SIPP Questionnaire we set a pend job for 7 weeks (Aviva’s guideline is 8 weeks), so assuming we received that back in our offices within that time scale we would then need to refer to establish whether they were happy for us to proceed and assuming all was OK we could then pay out within 2 weeks of the receipt of the SIPP Questionnaire, if Aviva did not delay a response. What we cannot put a time on is how long it would take to receive this Questionnaire. The SIPP questionnaire should have been issued when the original request was raised. This was missed by the processor.”*

*So, if Aviva had requested the outstanding requirements when it became aware of the transfer on 27 September 2022, even if it didn’t revisit the transfer request for the seven weeks it said were its service standards (the “pend job”), it would have been in a position to confirm with Ms B that the transfer should proceed by around 12 November 2022.*

*It could then have completed the transfer two weeks later on 26 November 2022. Aviva has said that it couldn’t be sure how long it would take for Ms B or her adviser to complete and return the SIPP questionnaire – which may have meant the process taking longer. But considering Ms B was able to provide her proof of ID documents within one day – and taking into account her desire to do everything required to transfer her funds in a reasonable timescale, I think it’s more likely than not that she would have completed and returned the questionnaire comfortably within the “seven week window”.*

*I asked Aviva if it could provide any other mitigating circumstances or robust explanations for the delays that it caused both in the time it took to action the original request and in not asking for the outstanding requirements – but it wasn’t able to offer any additional reasons beyond the simple “administrative” errors. I don’t think Aviva caused the delays deliberately and there’s no suggestion that it did anything other than simply not make its requests in a timely manner, but I have to consider what would have happened if it had carried out the transfer in the time that it said it ought to have done.*

*I think that, according to the timeline I've set out above, Ms B would have confirmed that she wanted to go ahead if asked on 12 November 2022 and therefore the funds would have been transferred to her new provider some two weeks later, well before she needed the TFC in order to fund the deposit for the house purchase. I note that the first of these hypothetical dates would have been before Ms B was made aware of a problem with the actual transfer – which occurred when she contacted Aviva to supply the outstanding verification documents. So there's no evidence to support the idea that Ms B wouldn't have provided confirmation that the transfer should proceed if she'd been asked that on 12 November 2022.*

*So I think the transfer would have progressed and completed along these timelines and if it had then there would have been no need for Ms B to have to consider an alternative course of action in early 2023. This was when she had an impending deadline to release her funds which would – understandably, more likely than not, have caused her to have lost faith that Aviva could still have completed a transfer in the remaining time. In those circumstances I don't think it's unreasonable that Ms B made the decision that she did, as she faced the real prospect of not achieving her aim of buying a property.*

*Aviva has seemingly accepted that it should have acted quicker at the beginning of the transfer process. It even set out for us how long the transfer ought to have taken if there had been no delays or other outstanding requirements. It paid Ms B compensation of £350 for that. But I don't think the payment is fair and reasonable when considering the repercussions here and also what I've said should have happened in this case if there hadn't been any delays.*

*When answering Ms B's complaint Aviva needed to appreciate that its errors directly led to her having to undertake an alternative option – which was unnecessary and led to her paying more tax than she needed to have done. It's also possible that the fund that would have been transferred in November 2022 might have been greater than what was available for the UFPLS payment in February 2023. I think the evidence supports the idea that Ms B would have continued with her original course of action if the transfer had been carried out without the delays that occurred.*

*So I think Aviva needs to undertake a loss assessment, to put Ms B as close to the position she would now be in had that happened."*

#### Responses to the provisional decision

Aviva said it accepted my provisional decision and would calculate the redress due on receiving the final decision.

Ms B explained her position. She said that she had been taxed on 75% of her pension proceeds by HMRC at over 41%. She will however have to pay 45% on all of the fund to meet her overseas tax liability. She calculated how much tax would have been paid if Aviva had transferred her plan shortly after her request, allowing her to subsequently drawdown funds in a tax efficient way, against what she would have to pay – across all jurisdictions – as a result of receiving the funds as an UFPLS and therefore being taxed on the entire proceeds. She thought this would amount to a repayment of around £11,230.

#### **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.

And because parties broadly accepted my provisional decision I see no reason to depart from my provisional findings. I'll set out my reasons below.

### The transfer requests

I began by looking at the situation from August 2021 because Ms B said that was when she first made an application through an adviser to begin the transfer process. But while Aviva accepted that it had received a call from Ms B on 17 August 2021 – and issued a retirement pack to her - it had nothing to suggest that a subsequent transfer request was made or received by it.

Ms B gave us information about the provider that was to be used for the transfer and of her communications with the adviser but couldn't provide any contemporaneous evidence to support that a request was made. I note that Aviva provided a call note from a conversation with Ms B on 12 October 2021 about how any payment of the funds might be taxed, but there was no suggestion that a transfer was already underway. The information Aviva provided at that time was at odds with what Ms B said her adviser had told her – so I can't discount the idea that the new information could have persuaded the adviser to reconsider the idea of a transfer. But in any case, I haven't been provided with any evidence to support the idea that Aviva was made aware of a request to transfer at that point, so I can't reasonably conclude this was when her transfer request journey began.

But there's no dispute that Aviva received a transfer request from a new provider on 27 September 2022 which is supported by an entry I've seen from the Origo transfer request system. So I think it's fair to use that date as the start of the actual transfer request. The timeline of events thereafter was that Aviva started work on the request on 26 October 2022 and identified further outstanding requirements. But it didn't make Ms B aware of these until 17 November 2022. This was a delay from when the request was received of around six to seven weeks.

Aviva was unable to provide a robust explanation for these delays when we asked it and has subsequently accepted my provisional decision – so I think it's fair to say it accepts that these delays were avoidable and its responsibility.

### What should have happened?

I think that if Aviva has requested the outstanding information – and made Ms B aware of it – when it received the request on 27 September 2022, even if it then worked to its service standards of not progressing the transfer for seven weeks, it would still have been in a position to confirm the transfer could go ahead around 12 November 2022. I think it could then have completed the transfer around two weeks later on 26 November 2022.

Aviva raised the issue of the SIPP questionnaire and how long this would take to return – which it said was out of its control. But I've seen that when she was asked to provide proof of ID documents Ms B was able to return that information the same day. So, bearing in mind her desire to complete the transfer in a timely manner, I think she would have completed and returned the questionnaire within the seven weeks that Aviva allowed.

I've also taken into account that Ms B wasn't made aware of the requirements that were needed by Aviva until 17 November 2022, so I think if Aviva had requested that information when it should have done there would have been little doubt, according to the timeline that I've set out above, that she would have confirmed that she wanted to go ahead with the transfer when these requirements would have been satisfied and Aviva was in a position to progress the transfer on 12 November 2022.

Ms B has told us that her objective on transferring was to use the TFC available to fund a house purchase. I've seen documents Ms B has provided which confirm this was due to

happen in early 2023. So I think she would have responded in a timely manner to whatever requests Aviva made of her after 27 September 2022. As a result, I think the transfer could have been completed within the timescales I've set out above and this would have meant that Ms B would never have had to consider the alternative action of taking an UFPLS payment in February 2023 – some five months after her initial transfer request. And it follows that if she hadn't needed to take the UFPLS then she wouldn't have suffered the unnecessary tax bill that she subsequently incurred.

So I think the responsibility for this tax charge lies with Aviva because if it had completed the transfer request within its own service standards the second part of the transaction (the UFPLS) would never have been required. I think Ms B only agreed to that course of action because of her need to access funds for the house purchase when she'd decided that Aviva was simply not able to complete the transfer within the remaining time available to her.

Aviva has accepted that it should have been quicker in progressing matters and has offered little in the way of reasons why this didn't happen. As a result, it paid Ms B £350 compensation for the distress and inconvenience caused. But I think Aviva needed to go further and compensate Ms B for the tax liability she incurred and any investment growth she lost because of the delayed transfer. Aviva needs to undertake a loss assessment to put Ms B in the position she would now be had the transfer completed according to the timeline I set out above.

Ms B has raised the question of the tax liability that she now has to meet in her overseas jurisdiction. What I've set out below ensures that *any additional* tax she has to pay as a result of taking an UFPLS instead of simply being able to transfer her pension should be reimbursed. But I can't agree the monetary value of that loss that Ms B has herself put forward in her own calculation. My role here is to set out the formula which Aviva should use to put her back into the correct position. And I note that Ms B says she was unclear about the redress options I had put forward. I have set out two options for Aviva depending on whether it's able to unwind her UFPLS payment and reinstate her personal pension. If it's unable to do that I've set out an alternative which simply shows how it should repay the loss incurred. But to do that I have to consider any lost investment growth as a result of the delay- which is why I've set out a calculation comparing the notional against actual position here.

### **Putting things right**

My aim is that Ms B should be put as closely as possible into the position she would probably now be in if Aviva hadn't caused delays to her transfer which led to her withdrawing funds using an UFPLS.

I'm satisfied that what I've set out below is fair and reasonable given Ms B's circumstances and objectives when she invested. Ms B has referred to the position regarding her house purchase and I think I've allowed for the inconvenience she was caused over that matter within my decision below. But I understand that Ms B was able to complete the purchase so I'm not aware of any additional loss or costs that were suffered there.

### **What must Aviva do?**

So, to compensate Ms B fairly, Aviva should either:

Unwind the UFPLS payment and rewrite the Aviva pension plan so that it would have been transferred to the new provider on 26 November 2022, with the TFC paid and the residual amount invested according to the investment strategy set out by Ms B's adviser when it recommended the transfer.

Or, if this isn't possible to do – and Aviva needs to set out a clear explanation with reasoning and evidence to demonstrate why that might be the case, it needs to work out the position Ms B would now be in had the transfer completed and the UFPLS not been raised and simply pay any loss back to her – including the excess tax.

Both outcomes would require Aviva to compare, as at the date of this final decision, the notional value of the original pension plan – had it been transferred on 26 November 2022 and invested according to the investment strategy set out in the adviser's suitability report - with the current value of the UFPLS, also taking into account any income/capital sum Ms B has withdrawn from the UFPLS.

If the notional value is greater than the actual value there is a loss and compensation is payable.

If there is a loss, Aviva should pay into Ms B's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance. If payment isn't made within 28 days, add interest to the loss at 8% simple per annum.

If Aviva is unable to pay the compensation into Ms B's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income.

Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Ms B won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Ms B's actual marginal rate of tax.

Aviva has paid £350 for the distress and inconvenience caused by its actions over the transfer. I think that's a fair and reasonable payment in the overall circumstances of the complaint.

Income tax may be payable on any interest paid. If Aviva deducts income tax from the interest, it should tell Ms B how much has been taken off. Aviva should give Ms B a tax deduction certificate in respect of interest if Ms B asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Any withdrawal from the portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Aviva totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

However, Aviva needs to consider the overall tax liability that Ms B has here (including to the overseas jurisdiction) as the transfer would have concluded without Ms B needing to pay any further tax – after her TFC was paid – until she began to draw income from the new plan and pay tax at her appropriate rate. So if Ms B has to pay any further tax to the overseas jurisdiction, beyond that which I've allowed for here – and that tax was only due to Aviva's error – it should refund that amount upon proof from Ms B, adding any interest from the date that it was paid until the date of settlement.

**My final decision**

For the reasons that I've given I uphold Ms B's complaint against Aviva Life & Pensions UK Limited. It should carry out a redress calculation as set out above and present that information in a clear and simple manner.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 22 March 2024.

Keith Lawrence  
**Ombudsman**