

The complaint

Mr S has complained because Aviva Life & Pensions UK Limited changed the terms of his self-invested personal pension ("SIPP") – which he feels rendered it unfit for purpose. He's also unhappy with how it handled his complaint.

What happened

Of relevance here, the terms and conditions of Mr S's SIPP said:

- when dealing in Mr S's investments Aviva needed to be in receipt of a valid instruction from either Mr S, his advisor or his discretionary investment manager
- Aviva could change the terms and conditions of the SIPP
 - to respond in a proportionate manner to changes in the way it administered investments or products of this type
 - to respond in a proportionate manner to changes in technology or general practice in the industry
 - to respond in a proportionate manner to changes in taxation, the law or interpretation of the law, decisions or recommendations of an ombudsman, regulator or similar person, any code of practice, or
 - to correct errors, if it is reasonable to do so.

They also said Aviva would tell Mr S in writing of any change (that wasn't necessary to meet regulatory requirements) that it considered to be to his disadvantage at least 60 days before the change becomes effective.

In June 2020 Aviva made the commercial decision to change the term about being in receipt of a valid instruction from Mr S when dealing with an investment. The change meant Aviva would only accept an investment instruction directly from Mr S in exceptional circumstances where he was unable to place an instruction through his advisor.

Mr S complained to Aviva as he still wished to place trades directly. Aviva told Mr S it was entitled to amend the terms and conditions and the changes were made due to Covid-19 and the effect this had on its platform's propositions. It confirmed it wouldn't process future instructions given by Mr S on a direct basis – the instruction would need to come from his financial advisor. It nevertheless offered Mr S £200 compensation for distress and confusion caused due to the SIPP and the functionality of the platform. Aviva has told us this was the first time it told Mr S that the terms and conditions had changed.

Aviva later told Mr S that the term was changed as a result of the pandemic to clarify that whilst its platform had always been designed for customers with advisors it would accept instructions directly from customers in the event the customer was, as an example, unable to contact their advisor due to the pandemic.

Mr S moved his SIPP to a different provider in September 2020.

In May 2022 Mr S again complained to Aviva. He said the way it operated the SIPP meant it was unfit for purpose and caused him to incur losses and waste time. He referred to the change in the terms and conditions making it almost impossible for him to place trades. He also added his dissatisfaction with how Aviva was handling the complaint. Aviva didn't uphold the complaint about the change in terms. It didn't think the SIPP was unfit for purpose and it referred Mr S back to its response in 2020. For the complaint handling Aviva offered Mr S £100 compensation.

Our investigator didn't think the complaint should be upheld. In summary, she felt Aviva was entitled to change the terms and that the SIPP remained fit for purpose (albeit she acknowledged that it no longer met Mr S's needs). She did however think that Aviva failed to properly inform Mr S of the change, and she felt it should pay £200 compensation for the inconvenience caused. She further said that Mr S's complaint about Aviva's complaint handling fell outside of our remit.

Aviva accepted our investigator's conclusion but Mr S didn't. He felt the changes Aviva made were so significant that they made the SIPP unfit for purpose. He made four general points:

- a product provider should be responsible for damages where they change terms and conditions which render a product unfit for purpose
- the £200 compensation suggested by our investigator bore no resemblance to the time and cost involved in him trying to trade and moving the SIPP following the change in the term
- various regulator principles (eg to act with integrity, skill, care and diligence) were breached by Aviva in its handling of his complaint
- although Aviva accepted our investigator's conclusion the issue of the £100 previously offered remained outstanding (particularly given how Aviva has ignored his communications on this issue).

The complaint has therefore been passed to me to decide.

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.

Preamble

In responding to our investigator's conclusion Mr S made several points about how our investigator had handled the complaint and reached her conclusion – including why and how she determined £200 was sufficient compensation without asking him about the time and costs associated with trying to trade and transferring the SIPP.

My remit here isn't to comment on or clarify how our investigator handled the complaint or the thought process she followed in reaching her conclusion. It's to decide the complaint Mr S brought to us about Aviva. My review of the complaint and my decision are entirely independent of our investigator's. And my decision will concentrate solely on the complaint points made about Aviva.

Mr S also asked that I address each of his points using the same numbering system that he used. And he asked for sight of a draft of my decision in case there was an error of evidence or fact. Although this decision will be binding on Aviva if Mr S accepts it, we are an informal dispute resolution service. This means that while I've considered the complaint and arguments as a whole I'm entitled to focus on the points that I think are relevant to the outcome of the complaint. Further, the drafting of my decision isn't a negotiating tool for Mr S

(or Aviva for that matter) to make further comments or arguments – our two-stage investigation process has already given both parties sufficient opportunity to provide any evidence or make any further representations. Mr S is not therefore going to get a copy of my decision in advance.

Change in terms

Irrespective of whether the platform was designed for advisor trading, direct customer trading or both, it's clear to me that the original terms and conditions of the SIPP allowed Mr S to instruct Aviva directly to carry out trades. It's also clear that the changes to the terms made direct customer trading virtually impossible. However, it's also clear that the terms and conditions of the SIPP did allow Aviva to change the terms and conditions in certain circumstances. Accordingly, the outcome of this part of the complaint in my view turns on whether Aviva acted fairly when it changed the relevant term.

Aviva was only able to change the terms of the SIPP for one of the four reasons I've listed above. Aviva said it changed the term due to how the Covid-19 pandemic affected its platform's propositions. In my view, this fell within the ambit of responding to a change in the way Aviva administered investments or SIPPs. I'm also satisfied that the change was proportionate given that, from Aviva's point of view, the platform had always been designed for customers with advisors and that there was a separate product available for consumers who wanted to trade directly ie without using a financial advisor.

Accordingly, I conclude that Aviva acted fairly and reasonably, and within the terms of the SIPP, when it amended the term.

Mr S has argued that the change rendered the SIPP unfit for purpose and that Aviva shouldn't be able to make changes that have this effect. I disagree with Mr S that the SIPP became unfit for purpose. This is because while I agree it made it difficult (if not impossible) for him to instruct Aviva himself the fundamental nature and purpose of the SIPP didn't change – it was still a retirement savings vehicle that allowed Mr S to invest his retirement savings into various investments. The only change was that investment instructions needed to come from his advisor rather than from him directly.

Despite my above conclusion it's clear that Aviva didn't notify Mr S of the change as it was required to. In my view, the change was to Mr S's disadvantage as it took something away from him ie the ability to instruct Aviva directly on the trades he wished to make. So Aviva should have informed him of the change in writing at least 60 days before the change became effective. But it didn't inform him until around six to seven weeks after it came into force.

Mr S feels the compensation for the inconvenience he endured as a result of the change should be around £1,000. During the complaint he's detailed the number of hours he's spent on the matter together with his hourly rate. Compensation I award isn't calculated on this basis. This is because it unfairly disadvantages lower earners (who might suffer just as much or more inconvenience as anyone else) and it rewards those people who spend more time than is reasonably warranted dealing with a matter. Rather, I look at what happened overall, how that affected the consumer and award compensation that I think is fair and reasonable.

A consumer may of course argue that they suffered a financial loss (as opposed to inconvenience) based on their hourly rate because they spent time pursuing a matter rather than working/earning. But I'm not usually persuaded by such arguments as it was the consumer's choice to pursue the matter during working hours rather than non-working hours.

Typically, I award between £100 and £300 compensation when there's been a single mistake that required a reasonable effort by the consumer to sort out. The impact of the mistake usually lasts for a few days or weeks and causes some distress, inconvenience, disappointment or loss of expectation. In contrast, I typically make awards upwards of £1,000 when a complaint takes a lot of effort to sort out and the impact of the mistake lasts many weeks or months and caused considerable/substantial distress, inconvenience etc.

Compensation I award is for distress, inconvenience etc the consumer wouldn't have otherwise suffered but for the business's mistake. The mistake in this case was Aviva not telling Mr S in advance that it was changing the terms of the SIPP – it wasn't the change in the term itself. That's important here because the general effect the change had on Mr S – eg him not being able to trade directly, him having to instruct his financial advisor who in turn would then have to instruct Aviva, him moving his SIPP to another provider – and the inconvenience it caused is something that would have happened even if Aviva had given Mr S the required 60-day notice eg he still would have been inconvenienced by having to move his SIPP. So I don't think there are grounds to make Aviva pay any compensation for this.

I do nevertheless agree with our investigator that Mr S would have experienced some (rather than substantial or considerable) frustration and inconvenience due to not being told in advance about the amended term. In that regard, I consider £200 to be fair and reasonable to compensate Mr S.

Complaint handling

How Aviva handled Mr S's complaint doesn't fall within our jurisdiction so my remit doesn't extend to considering this issue. This is because we can only consider complaints about financial businesses carrying out *regulated activities* (or ancillary activities connected to regulated activities). And complaint handling isn't a regulated activity.

It is sometimes the case that a complaint about a business's complaint handling is 'part and parcel' of and intrinsically linked to the main complaint about a regulated activity. This isn't the case here though. Mr S's initial complaint to Aviva about the change in terms and conditions was in 2020. He then complained to Aviva about the same issue and about the complaint handling in 2022. Accordingly, I'm satisfied that Mr S's *complaint handling* complaint arose after his complaint about the change in terms and is therefore an isolated complaint – rather than being ancillary to the regulated activity concerning Aviva's provision of the SIPP.

Accordingly, I make no judgement on whether Aviva treated Mr S fairly in the way it handled his complaint (including whether or not it breached any regulator principles) or on whether any compensation it offered was fair.

I leave it for Mr S to either accept or reject Aviva's offer or to pursue the matter further directly with Aviva or elsewhere.

My final decision

I uphold this complaint and require Aviva Life & Pensions UK Limited to pay Mr S £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 November 2023.

Paul Daniel
Ombudsman