

## The complaint

Mr B complained to Aviva Life & Pensions UK Limited about the redress offered after an error was identified with the fund values it transferred to Mr B's Self-Invested Personal Pension (SIPP) plan.

## What happened

In late 2020, Mr B arranged to transfer two pension plans he held with Aviva to a SIPP he held with another provider, I'll refer to as Firm I.

In May 2022, Aviva wrote to Mr B because, having completed an audit, it had identified a historical pricing error regarding annual management charges on one of the funds held within the two pensions than had been transferred. Aviva explained this meant it had transferred less to Firm I than it should have done. It calculated the loss, including net interest of £5.28, to be £336.54. Aviva said that it would shortly be sending Mr B a cheque for this amount. It also confirmed that, although there is sometimes a tax charge for any additional payments from a pension contract which is no longer in force, in this instance it had agreed with HM Revenue & Customs (HMRC) that Aviva would settle the charge on this payment. So there was no tax for Mr B to pay. A week later Aviva sent Mr B a cheque.

Mr B contacted Aviva and requested information so he could determine if what it was offering to rectify matters was fair. Unsatisfied with the response received, Mr B complained to Aviva that:

- The amount paid does not reflect the fact that the funds have lost the benefit of being within a pension tax wrapper
- No allowance had been made for loss of gain on the funds between 23/12/2020 and the date of payment (17/05/2022). And Aviva has added interest to the loss at Bank of England interest rate plus 1%, yet the Financial Ombudsman Service would allow for interest at 8%

Aviva issued its final response to the complaint on 19 August 2022. It said:

- The payment had been made to Mr B tax free. But if this amount had been withdrawn from a pension it would have been taxed as income. Aviva explained that if Mr B had a suitable pension policy, he would be able to pay this into his plan. But it recommended he seek financial advice before doing so.
- It had written to Firm I (three times) asking for information on what Mr B's fund would be worth, had the correct amount been transferred initially. Aviva explained that, so far, it hadn't received a response. It asked Mr B if he was able to obtain this information so Aviva could calculate any financial loss incurred.

It also explained that its standard process is to use the Bank of England interest rate plus 1% as this puts Mr B in a similar position to if he'd received the money and kept it in a bank. It acknowledged that the Financial Ombudsman Service may use a different rate, but it explained that the payment hadn't been taxed as

income. So, it believed this to be a fair way to rectify the error caused by the incorrect AMC.

- In recognition of the trouble and upset caused to Mr B, Aviva said it had issued a cheque for £25.

There were further emails between Mr B and Aviva after the correspondence I've summarised above, one of which included Mr B's own calculations setting out the loss he thought he'd suffered. As the matter was unable to be resolved, Mr B referred the complaint to our service for an independent review.

When providing its file to this service, Aviva said that it had written three times to Firm I to ask for calculations. But it had failed to reply so this part of the resolution was still open. Aviva confirmed that if Firm I still refused to provide the information, it would be happy to pay interest of 8% on the amount of £336.54 from the date due to the date of payment.

Our investigator reviewed the complaint and initially thought Aviva's offer was fair. However, Mr B provided further comments in response to the investigator's opinion. In light of these new comments, the investigator reconsidered matters and updated her findings. In summary she said that:

- Mr B had provided evidence to demonstrate that Firm I did in fact respond to Aviva in September 2022. The evidence showed Firm I had directed Aviva to Mr B for the information it required.
- Mr B was unhappy with the delay in Aviva notifying him of the error. But the investigator thought what Aviva had proposed would ensure he'd not lost out as a result of the error and the delay in it being identified. In terms of any distress or inconvenience caused by this delay, Mr B wasn't aware there had been an error during this period, so the investigator didn't think any compensation payment Aviva made (for distress and inconvenience) needed to take this period into account.
- After Mr B was notified of the error, there were some customer service issues. In particular, the investigator thought Aviva could have responded and clarified its position with Mr B's SIPP provider in the knowledge that Mr B had already tried to communicate and demonstrate what he saw as the investment loss via his own calculations. Aviva had awarded Mr B £25 to date for the inconvenience caused by the incorrect unit deduction. The investigator recommended Aviva pay Mr B a further £125.
- In terms of what Aviva needed to do to ensure Mr B hadn't lost out as a result of the error, the investigator recommended Aviva pay Mr B 8% on the amount of £336.54 it had already paid him.

Mr B responded to the investigator's updated findings. He explained that his complaint was never about obtaining additional money from Aviva; it's about Aviva having a duty to provide competent financial services in line with the regulator's handbook. Mr B believes Aviva has failed at every stage to correct the error properly, including after it had been provided with everything it wanted to complete a loss calculation.

Aviva responded to the investigator's findings. It said that its records didn't show that it had received the information it had requested to complete the loss calculation. And it hadn't received Mr B's own calculations. It said that its complaint handler did respond to Mr B's offer of calculations and 'estimates' of gains on 25 August 2022 explaining it could only

complete the calculation when it receives the required information from Firm I. Mr B then replied the same day stating he was going to the Financial Ombudsman Service, which it believed he had done. Mr B sent a further email on 12 September 2022 stating he wanted a reply to an email he sent on 26 August 2022 – which Aviva didn't receive.

### **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.

Having reviewed all the information available, I'm partially upholding the complaint. I'll explain why.

Aviva has calculated that it transferred less to Firm I when Mr B's pensions were transferred in December 2020 and January 2021. It initially added interest at Bank of England rate plus 1% to the loss it identified. Mr B queried this and Aviva agreed to cover any investment loss on these funds. But Aviva didn't receive the information it requested from Firm I in order to calculate this loss. Ultimately, it proposed to use 8% simple interest to address the investment loss. Our investigator thought this was fair.

I can see that Mr B has been able to provide the information Aviva requested in order to complete these calculations. And he's provided his own calculations of what he considers the loss to be. I do appreciate Mr B has gone to the effort of providing this information. But I won't be asking Aviva to recalculate using what he has provided. I'd like to clarify that it's certainly not because I don't trust the information he's provided; from what I've seen, it's the information Aviva needed to complete the calculation. However, Mr B's calculations aren't in line with the approach this service would ask Aviva to take if we asked it to complete a loss assessment. And I think the offer put forward by Aviva to resolve this part of the complaint is fair so I don't think it's necessary for a recalculation to be done.

I say this because, in situations such as this, we would usually ask Aviva to compare the value of the SIPP, with the value that it would have been worth, had the correct amounts been transferred at the right time. We would then ask that any loss identified is paid to the consumer as a lump sum. But had it been possible to pay into the pension, it would have provided a taxable income. Therefore we would ask that the compensation is 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. I appreciate Mr B has disputed the tax position and he's said that this is a payment for investment loss as a result of an error caused by Aviva when transferring his pension and that he hasn't asked for money from his pension. But it's not unreasonable for Aviva to make a payment directly to Mr B to settle this matter and our usual approach would be to ask it to reduce the loss accordingly.

This payment represents additional pension benefits that would otherwise have likely been taxed in future. So this service takes the view that when these benefits are taken, they would provide a taxable income. Mr B says that he wouldn't be paying tax in retirement and I don't have any details of Mr B's retirement provision, other than what he transferred from Aviva. So I don't know of his state pension or other entitlements. But I'm conscious that the state pension counts towards an individual's personal allowance, so this alone, leaves very little left of the personal allowance before an individual would be required to pay basic rate tax. And it would be uncommon for an individual with a fairly substantial pension not to have to pay any tax at all in retirement. For this reason, if I was asking Aviva to recalculate the loss – which I'm not - I would also ask it to reduce the payment to reflect the notional tax position.

However, as I've mentioned above, I won't be asking Aviva to recalculate the loss Mr B has suffered. This is because, while Mr B's own calculations take account of Aviva having already paid him £336.54, they don't take account of the fact this payment was made gross and already included interest at Bank of England rate plus 1%. Nor do the calculations take account of this payment (the £336.54) being paid to Mr B in May 2022. So any investment loss on the actual loss identified as a result of the pricing error of £331.27 (£336.54 minus interest at Bank of England plus 1%), is only payable between December 2020/January 2021 (when the loss occurred) and May 2022.

Mr B's own calculations suggest the loss continues until the complaint is settled but for the reasons explained above, I'm not satisfied this is right.

It also appears Mr B intends to reinvest these additional funds in his pension. I say this because he has included trading fees in his calculations. And while I don't doubt Mr B will incur these trading fees if he chooses to reinvest, I won't be asking Aviva to cover these additional fees. This is because, I think its offer to pay 8% interest on the £336.54 up to May 2022, on top of the amount it has already paid is reasonable. As I've said above, the initial payment was made gross. And Aviva has confirmed that it won't be deducting any notional tax from this additional payment. If Mr B chooses to reinvest these funds in a pension wrapper, they will be treated as a contribution and will likely attract tax relief. Given that this service would usually ask a business to make these payments net of tax, I think what Aviva has offered to do here is fair and will likely leave Mr B in a better position than if I was to ask Aviva to recalculate the loss in line with the approach our Service would take.

#### Delays and general customer service

I appreciate what Mr B has said about Aviva having a duty to provide competent financial services in line with the regulator's handbook. It isn't the role of this service 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 what I've set out above does that. However, I'm conscious that this matter has caused Mr B some frustration and inconvenience as well. So I've thought about what Aviva needs to do in this respect.

I know Mr B thinks any award for distress and inconvenience should take account of the fact that it took Aviva over 16 months to identify the error and notify him that it had occurred. But what I've set out above ensures Mr B hasn't lost out as a result of the delay. And until Aviva wrote to Mr B, he wasn't aware there was a problem. So although it took over 16 months to let him know, I don't think there was any distress or inconvenience caused to him during this initial period.

After Aviva notified Mr B of the error, he had to request details in order to work out what had happened to determine if he'd suffered a loss. And, I agree with our investigator that since that point, Aviva could have done more to engage with Mr B and his SIPP provider. And it missed opportunities to resolve this matter sooner.

After Aviva agreed it would consider any financial loss Mr B may have suffered as a result of the funds not being transferred at the correct time, it advised Mr B that if he was able to provide the required information, it would carry out the loss assessment. So, Mr B provided

this information to Aviva but it appears his email was quarantined.

Aviva has since said that it checked its quarantined email file and an email hadn't been received. So it assumed Mr B hadn't sent an email and had instead referred matters to this service. I don't think Aviva was right to make this assumption. Mr B had chased Aviva for a response to his email. So I think it was clear he'd sent an email and Aviva should have followed this matter up with him when one couldn't be found. Had it done so at this point, it would have received the calculations and information Mr B had submitted. Instead Mr B was left feeling that he had gone to the effort of providing this information - which Aviva said he could provide - and it was being disregarded. Alternatively if this information wasn't sufficient, it could have advised Mr B why and what additional information was needed.

Aviva also mistakenly advised this service that Firm I hadn't responded to its request for information. Mr B has provided evidence to show that Firm I had, in fact, replied in September 2022 and advised Aviva that it should get the required information from Mr B. I think at this point, Aviva again missed another opportunity to engage with Mr B to resolve this matter. Instead, it seems it took no action, despite Mr B chasing it, by email on 12 September and 13 October 2022, before he referred the matter to this service in December 2022.

Aviva has already sent Mr B a cheque for £25 for the inconvenience caused by the initial incorrect AMC pricing error. Like our investigator, I think it's clear this matter has caused Mr B additional frustration and inconvenience. I find that the £25 compensation already paid is insufficient, both for that initial upset and for what has happened subsequently. Our investigator thought Aviva should pay an additional £125 and I agree this more accurately reflects the inconvenience caused.

### **Putting things right**

What must Aviva do?

To compensate Mr B fairly, Aviva must:

- Calculate 8% simple interest per year, on the amount of £336.54, from the date Mr B transferred his pensions to Firm I, to the date of its payment to Mr B in May 2022. Aviva has confirmed that it will not be reducing this amount to reflect notional income tax.
- Pay an additional £125 for the distress and inconvenience caused, so £150 in total, as a result of the customer service failings Mr B experienced in trying to put this matter right.

**My final decision**

For the reasons explained, I uphold this complaint and direct Aviva Life & Pensions UK Limited to pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 15 September 2023.

Lorna Goulding  
**Ombudsman**