

The complaint

Mr T is unhappy Aviva Life & Pensions UK (Aviva) caused delays when actioning his request to switch pension funds. He says this delay meant that planned further trades were also delayed and he has suffered a financial loss as a result.

What happened

The facts of this complaint are well known to the parties, so I have only briefly summarised the key events below.

In summary, Mr T is unhappy that a switch instruction he placed on 3 February 2022 didn't get actioned on 7 February 2022 as he expected. This seems to have happened because of a mistake and it took until 24 February 2022 for things to be corrected so that Mr T could make further fund switches. And Mr T subsequently complained to Aviva about this.

Aviva responded to Mr T's complaint saying that on the one hand a mistake was made that caused the delay, but it also said that Aviva didn't make a mistake that requires any further financial compensation. Aviva said the original error occurred because Mr T submitted a switch instruction before a previous instruction had been completed. And that the mistake that was made was actually switching all of Mr T's holdings to one fund instead of only switching a portion of it. On this basis, Aviva backdated Mr T's 3 February 2022 instruction as a goodwill gesture and offered £100 compensation for the inconvenience caused by the mistaken 100% fund switch. Aviva said that otherwise, it didn't make a mistake that caused financial detriment.

Unhappy with this response, Mr T brought his complaint to this Service for an independent review.

One of our investigators looked into things and determined that the complaint shouldn't be upheld because Aviva had corrected the initial error and awarded Mr T £100 compensation for the trouble this error caused him. The investigator didn't think Aviva needed to do more as she thought Mr T could have still placed fund switch instructions while the issues with the 3 February 2022 instruction were being corrected.

Mr T didn't agree and asked for an ombudsman's decision.

When the complaint was passed to me, I was unable to conclude from the evidence I'd been provided that Mr T could in fact continue to make trades while the error was corrected, so I asked for a copy of the call between Mr T and Aviva on 10 February 2022, when the issue came to light, to see if he had been given this information over the phone.

Having listened to the call, I was minded to reach a different conclusion to the investigator and wrote to the parties to let them know this. I explained:

I've now listened to that call and from it I'm persuaded of two things; first Mr T had a clear strategy to de-risk his portfolio over a short period of time and had been in the process of implementing that strategy. This was made very clear to the Aviva during this call. And

second, at no time was Mr T informed that he could continue with his strategy while things were unsettled following his 3 February instruction.

So with that in mind, I'm unable to agree with the investigator's assessment.

Furthermore, it seems to me that the mistake that precipitated the issue was Aviva incorrectly actioning the redirection of future contributions instruction placed on 2 February 2022 as a fund switch instruction. Based on everything I've seen, but for this error, Mr T's 3 February 2022 instruction could have proceeded as normal, and he could have then proceeded to make the additional switches he planned. As this was Aviva's mistake, I think it needs to put Mr T in the position he would be in now if things had gone as they should have. This means Mr T's subsequent fund switches would have happened sooner than they did, i.e. before 24 February 2022.

Mr T has provided evidence of when the additional switch instructions were actually placed and details of when they would have been placed if things had gone as they should have. I'm persuaded by the evidence that Mr T was adamant about making these switches and I don't think he would have delayed if he thought he had a choice. I can't see that Aviva made him aware of any alternatives to placing instructions online through the member site (something he couldn't do while things were being reconciled) and I note that as soon as he was able to make further switches online he did.

Therefore, I am currently minded to uphold this complaint and direct Aviva to conduct a loss calculation based on when the switch instructions should have happened.

Based on what I've seen, this means that Aviva should conduct a loss assessment as if the switch instructions listed below were given at the date listed if no mistake had occurred:

Actual Instruction Date	Instruction Date if No Mistake
24 February 2022	7 February 2022
01 March 2022	9 February 2022
4 March 2022	11 February 2022
8 March 2022	15 February 2022

I also consider a further £150 warranted for the unnecessary distress and inconvenience caused to Mr T by Aviva's actions in this case.

Mr T responded and accepted my initial findings.

Aviva also responded, saying in relevant summary:

Throughout both our and your [Investigator's] investigations, Mr T mentioned many times the reason he delayed until 24 February to place his next trade was because he had no online access, and 24 February was the first time he did, so he began placing switch instructions again. He alluded that he'd tried from 2 February 2022 to 24 February 2022 to access online (which is not contractual access) to place trades and as soon as he could he did.

This was the basis of our decision ...

At no point has he mentioned he didn't think he could not place trades or wasn't told that he could. ...he appears to have been aware he could continue placing trades as he was attempting to online throughout that period.

This being the case there was nothing stopping him doing this over the telephone or any other contractual avenue (post or email). However, he chose to wait to do them online which was his preferred method. This is also backed up by the fact he waited 6 days after the error had been rectified to place his next trade (18-24 February). Had he wanted to place what was his next one earlier he could have done this at any point (according to your latest view) from 18 February but again chose not to.

Aviva asked for my thoughts as it felt this was a change in position as Mr T hadn't before claimed he was never told he could continue to trade.

I responded explaining that Mr T's complaint from the outset was that he could not continue selling down his portfolio until the error had been corrected and that I'd not been provided with anything to persuade me that this wasn't the case.

I also explained:

...that the evidence indicates that everything wasn't settled on the 18 February as [Aviva] suggest[s] and it wasn't until 24 February that Mr T's account actually reflected the instructions given on 3 February. Further, when Aviva contacted him for clarification regarding his instruction on 9 February 2022 he promptly responded on 19 February 2022 and gave a clear explanation of what he thought had happened and what should have happened.

As you rightly note, Mr T tried to place instructions through the member site several times during the three weeks between 3 February and 24 February but wasn't able to. You say that Mr T could have continued to trade during this time, but I've not seen anywhere that Aviva made him aware that this was possible.

Mr T believed, and based on what I've seen, I can't say unreasonably, that the system only allows one switch instruction at a time. So until the 3 February instruction was properly executed (and the other mistakes along the way corrected) I don't think I can reasonably say Mr T should have continued to place switch instructions, by any method, as he couldn't know they'd be actioned and wouldn't cause further confusion.

Therefore, I am still minded to issue a final decision along the lines [of my previous correspondence].

Aviva provided no further comment or evidence for me to consider.

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 done so, for the reasons explained to the parties as detailed above, I don't think Aviva has done enough to put right its mistake, so I am upholding Mr T's complaint.

From the evidence I've seen, I'm persuaded that Aviva's mistake in actioning Mr T's redirection of future contributions request as a switch instruction on 2 February 2022 is what caused his switch instruction on 3 February 2022 to fail. Had this not occurred, I consider it more likely than not that it would have been actioned on 7 February 2022.

Furthermore, I've seen insufficient evidence to allow me to conclude that Mr T was able to continue making trades while the 3 February 2022 instruction was still being corrected. This was not corrected, and online access wasn't available to Mr T again until 24 February 2022.

Had he been able to make switch instructions earlier, I am persuaded by the evidence that he would have done so. The 10 February 2022 call between Mr T and Aviva, along with his subsequent trades, clearly demonstrates that Mr T had a definitive strategy in place to de-risk his portfolio over a short period of time. But for Aviva's mistakes, the switches Mr T made between 3 February 2022 and 9 March 2022 would have happened sooner.

Putting things right

My aim in awarding fair compensation is to put Mr T into the position he would likely have been in, had it not been for Aviva's error.

So to put things right, Aviva must:

- conduct a loss assessment on Mr T's pension fund comparing the current value with what the plan would now be worth if the switch instructions listed below were given at the date listed if no mistake had occurred:

Actual Instruction Date	Instruction Date if No Mistake
24 February 2022	7 February 2022
01 March 2022	9 February 2022
4 March 2022	11 February 2022
8 March 2022	15 February 2022

If a loss is identified, then the loss should if possible be paid into Mr T's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr T as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

As Mr T would have taken tax-free cash, 25% of the loss would be tax-free and 75% would have been taxed according to their likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

- I understand Mr T has also taken a tax-free cash lump sum from his pension plan. If the value of his fund at the date this was paid is calculated to have been higher as a result of the loss assessment above, then Mr T would have been entitled to a larger lump sum if no mistakes had been made. Therefore, any difference in the tax-free cash should be paid direct to Mr T plus 8% interest from the date the tax-free cash was originally paid to the date of this decision.
- I also consider a further £150 warranted for the unnecessary distress and inconvenience caused to Mr T by Aviva's actions in this case.

My final decision

For the reasons explained, I uphold Mr T's complaint and direct Aviva Life & Pensions UK Limited to pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or

reject my decision before 8 January 2024.

Jennifer Wood
Ombudsman