

## The complaint

Mr S has complained that Aviva Life & Pensions UK Limited's actions led to a delay in the transfer of his defined benefit ('DB') occupational pension scheme ('OPS') to his existing Aviva stakeholder pension. Mr S believes he has lost out as a result of the delay.

## What happened

Mr S was considering transferring the benefits from his OPS to his existing Aviva pension. He instructed a firm of financial advisers (the IFA) to assist him. In December 2020 the OPS provided a cash equivalent transfer value ('CETV') quote for £536,885. At that time, the CETV had an expiry date of 2 March 2021.

On 8 January 2021 the IFA wrote to Aviva asking for certain details of Mr S' Aviva pension. Aviva didn't immediately reply and, on 29 January 2021, the IFA requested the information again. It said Mr S' CETV was only guaranteed until 2 March 2021.

Aviva replied in February 2021, it then swapped further correspondence and information with the IFA until 25 February 2021.

On 1 March 2021 the IFA sent forms the OPS required Aviva to complete to allow the transfer to go ahead. The IFA ticked a box on the form to say Mr S' OPS fund did not include a guaranteed minimum pension (GMP)<sup>1</sup>. The forms also advised Aviva that the OPS scheme had not been GMP equalised. Aviva returned some of the required information the next day. At the IFA's prompting Aviva then sent it further information. The IFA forwarded that to the OPS. The OPS has recorded that, at that time, it had enough information to secure the CETV pending its statutory expiry date on 2 June 2021.

On 16 March 2021 the OPS identified that Aviva hadn't sent it everything it needed. So it asked for the outstanding information. On 23 April 2021 the OPS received the outstanding information but it noted that some of it was clearly inaccurate, for example it included an Aviva letter which referenced funds having been transferred away from Aviva in error, when no such event had taken place. The OPS sent an email to Aviva to query this.

On 19 May 2021 the OPS called Aviva to ask for a response to its previous email. Aviva said it hadn't received it as it had been sent to an incorrect email address. The OPS re-sent its email. It said the CETV guarantee would expire on 2 June 2021 and asked Aviva to reply by 26 May 2021. The IFA followed this up also asking Aviva to reply by 26 May 2021.

Mr S rang Aviva on 24 May 2021. He said the IFA had sent him an email saying that Aviva was causing delays. He added that if Aviva didn't provide the required information by the deadline the CETV could be revalued and he could lose out. Aviva said it would raise a

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<sup>1</sup> GMP is a pension entitlement some DB scheme members have which affects state pension. A member's entitlement to GMP will affect any CETV the scheme offers. Following a court case in 2018 and another in 2020, some DB schemes were required to adjust the amounts of GMP paid to certain scheme members. The process is known as "equalisation". Where a DB scheme has not yet equalised its GMP then it might be required, at a later date, to pay an additional transfer sum to members who had previously transferred out of the scheme.

complaint. It sent an update to the IFA that day. It acknowledged that it hadn't previously provided up to date information and had given some misleading answers. It apologised for the delays it caused. It provided up to date evidence and amended its cover to remove any reference to a refund owing to Aviva.

The IFA passed Aviva's information on to the OPS. The OPS noted that Aviva had said in its most recent letter something it hadn't mentioned previously, which was that it wouldn't accept transfers in from a scheme where the GMP was unequalised. As the OPS' scheme hadn't equalised its GMP, it asked the IFA to raise this with Aviva. The IFA did so on 28 May 2021.

On 1 June 2021 both the IFA and the OPS contacted Aviva saying that information was outstanding and that the deadline to complete the transfer was the next day, 2 June 2021.

On 3 June 2021 the OPS emailed the IFA copying the message to Aviva. The OPS confirmed that it hadn't heard from Aviva and as such the deadline had passed without it making the transfer. It said that if Mr S still wanted to go ahead with the transfer he would have to pay £100 for the CETV to be recalculated. Subsequently, after Mr S paid the £100 fee, the OPS recalculated the CETV at £514,807. The IFA told Aviva that, as the CETV had fallen because of Aviva's errors, Mr S would be seeking compensation.

On 28 June 2021 Aviva emailed the IFA explaining a form of disclaimer Mr S would need to agree to, which protected Aviva against certain liabilities, in order for it to accept the transfer from a DB scheme with unequalised GMP. The IFA confirmed Mr S was happy to accept Aviva's wording on 1 July 2021.

By 14 July 2021 the OPS had received all the relevant forms to make the transfer and Aviva confirmed it could receive it. But, as the OPS hadn't seen Aviva's unequalised GMP disclaimer previously, it wanted to look into that.

On 19 July 2021, Aviva replied to Mr S' complaint. It referred to the issues Mr S complained about as beginning on 24 May 2021. It said that as the transfer hadn't yet completed it couldn't know whether Mr S had suffered a loss. It said once completed it would consider compensation. After Mr S contacted it again Aviva gave him an update. It said it was looking at all the events since the beginning of its involvement. But it couldn't do so until the transfer had completed. That was because it would need to compare the actual transfer received with Mr S' position if there'd been no delays, although other factors could affect that.

Aviva contacted the OPS for updates on 28 July 2021 and 5 August 2021. On both occasions the OPS said it was looking into Aviva's issue with the GMP equalisation.

On 27 August 2021 the OPS began the transfer process. It completed that on 17 September 2021. On 22 September Aviva wrote to Mr S to confirm the transfer was complete.

Aviva replied to Mr S' complaint on 10 November 2021. It provided a timeline of events. It agreed it had caused delays, although it said it wasn't the only organisation which did so. It said it wasn't clear the transfer was intended for it until 29 January 2021. It said the documents sent to it on 1 March 2021 said there was wording about unequalised GMP. But the form had been completed to say that there was no GMP; so it didn't think that affected the position. It said that if it had dealt with the original request without delay it believed it would have completed that by 2 June 2021. But it said that would be based on a CETV revaluation calculated on 23 March 2021. It noted that it took the OPS two months to complete the transfer.

Aviva said that it didn't know what the CETV would have been at 23 March 2021. It suggested Mr S request that figure from the OPS and once received said it would calculate if Mr S suffered a loss based on that figure. It also offered Mr S £250 compensation for the distress and inconvenience the delay caused.

Mr S continued to correspond with Aviva but as he was unhappy with its proposed resolution to his complaint he brought it to us.

One of our Investigators looked into the complaint. After issuing an initial view and inviting comments on it, he issued a further assessment of the complaint on 25 May 2022. He said he thought it should be upheld. He said Aviva should have made its position about unequalised GMP clear at the outset. He recommended that Aviva should calculate what Mr S' losses might be as if the transfer had completed on 18 May 2021.

As Aviva didn't reply to our Investigator's second assessment of the complaint it was passed to me to decide.

After an initial file review, while I thought Aviva had caused delays, I didn't agree with our Investigator about exactly what had caused those delays or how Aviva should go about putting things right. So I emailed Aviva and Mr S setting out how I thought Aviva should put things right and invited comments. Mr S didn't reply, Aviva did. I've addressed its key points below.

### **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 arriving at my determination I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

And, while I've considered everything on file, I don't intend to address each and every point or issue raised. Instead I will focus my decision on what I see as being the key issues at the heart of the complaint and the reasons for my decision.

I'll add that, Mr S aside, there have been three organisations involved in this transfer: Aviva, the IFA and the OPS. It might be argued that all of the parties to the complaint have at one point or another contributed to delays. But, as I'm only considering Mr S' complaint against Aviva, in this decision I will only provide an analysis of whether or not I feel Aviva's actions have been fair and reasonable.

### ***Did Aviva cause delays?***

Aviva first became involved when the IFA wrote to it, in early January 2021. It's established good practice that, in order to ensure a quick, clear and smooth pension transfer process pension providers like Aviva should reply to correspondence within ten working days. In this case Aviva didn't initially reply at all.

Aviva's said it wasn't clear from the IFA's correspondence if it was looking for information in order to transfer Mr S' funds out of his Aviva scheme. It said that was because, as well as asking for details of the Aviva scheme, the IFA also said Aviva would need to complete

discharge forms. It said those would usually apply to transfers away from the scheme. But, while it might have helped if the IFA's correspondence had been clearer, I don't think that was a reason for Aviva not to respond. There was nothing preventing it from answering the IFA's questions which were clear or from seeking clarification about those which weren't, perhaps over the phone, if it wanted to.

The IFA chased Aviva for a reply. It said Mr S was looking to transfer his DB scheme funds into the Aviva scheme and as such it needed the information quickly. Aviva will be aware that DB transfers have tight deadline dates. So, in order to ensure that the deadline had the best chance of being met I think it was important that Aviva provided all the required information promptly. However, in this instance that went beyond just answering the IFA's or the OPS' questions.

Aviva had decided that its pension scheme wouldn't accept transfers in from schemes with unequalised GMP. That was a decision Aviva was entitled to come to. As I've indicated in the footnote above the issue of GMP equalisation had first become an issue following a court case in 2018. The situation was evolving and, as I understand it, some of the impact of the court's decision was still being worked out. So it would have been reasonable for Aviva to have made it clear at the outset that it wouldn't generally accept transfers from schemes with unequalised GMPs. Doing so at an early stage would have allowed the IFA, the OPS and Aviva to arrive at a solution. And, if that couldn't happen before the expiry of the CETV deadline, the IFA could have proposed an alternative to the Aviva scheme for Mr S to transfer into. But that didn't happen.

When the IFA sent Mr S' application to transfer his OPS funds to Aviva on 1 March 2021, the OPS papers included information under a heading of "*Additional Information for Receiving Arrangement*". That said that the DB scheme's GMP hadn't been equalised and may require an additional payment at some point in the future. It also said that if that was an issue for Aviva to let the OPS know. But while this was an issue for Aviva, it didn't point it out at the time.

Aviva, not unreasonably, has said that when the transfer application form was completed a box was ticked to say that the fund didn't include GMP. So it assumed that the equalisation issue wouldn't arise in this instance. I have some sympathy with it on that point. It's not clear who completed the application form, as it's been signed by Mr S. I wouldn't necessarily have expected Mr S to have an understanding of whether or not his pension contained GMP benefits as that's not necessarily something many DB scheme members are aware of. So I think Aviva should have clarified the point at that stage that could have prevented the issues that arose later.

That said I would have expected the IFA to have helped Mr S to complete the application form. The IFA should have known whether Mr S' funds included GMP or not. But, in any event, Aviva is aware of the deadlines involved in DB transfers and how such discrepancies can prevent them going ahead. So I think it would have been reasonable to expect Aviva to have raised the issue at that point. It didn't do so and the parties proceeded being unaware of the GMP equalisation issue.

The OPS identified a number of discrepancies with the information Aviva had provided. Although, at that time, it wasn't aware that Aviva wouldn't accept transfers involving unequalised GMP. The OPS asked Aviva for the relevant information. That took some time. The OPS said it needed all the relevant information by 26 May 2021. Aviva did make that deadline, but, when it did so, it also pointed out that it didn't accept transfers from DB schemes with unequalised GMP. The IFA and OPS did make efforts to sort this out with Aviva but, that didn't happen and the CETV deadline of 2 June 2021 expired. I don't think

that would have happened if Aviva had raised the unequalised GMP issue on receipt of the application on 1 March 2021.

Mr S confirmed he wanted to continue with the process which included the OPS calculating a new CETV. When it did so the figure had dropped by around £22,000.

Subsequently, there were further delays while the parties worked on how to sort things out. Aviva wasn't directly responsible for all of those delays. During the process it asked Mr S to sign a disclaimer concerning unequalised GMP, which he was happy to do. The OPS then decided whether they were content to go ahead on that basis. It eventually agreed that it was and sorted the transfer out in September 2017.

In the meantime Mr S was understandably upset that he believed he'd lost out financially because of the delays and errors. I've noted Aviva has acknowledged that its delays impacted on Mr S. It said it would establish his losses based on a CETV calculated as of 23 March 2021.

In order to decide if that's fair, I've thought very carefully about what element of the delays I think Aviva is responsible for and how it should put things right.

Our Investigator felt Aviva should have made the other parties aware it wouldn't accept transfers in from schemes with unequalised GMP from the earliest contact with the IFA. While I agree that it certainly would have been *helpful* for Aviva to have told the other parties it didn't accept unequalised GMP transfers at an early stage, I'm not aware of any regulation, guidance or established good practice that means it was required to do so. That's especially the case as the IFA didn't ask it that question directly. So Aviva wasn't under any obligation to let the other parties know about that at an early stage. It follows that I don't think it would be fair and reasonable to blame Aviva for all the delays that followed because of that.

The first point I think at which Aviva should have told the IFA and the OPS that it didn't accept transfers from unequalised GMP schemes was when it received the application form for the transfer. That form told Aviva the scheme was unequalised. At that time the CETV was due to expire the next day (2 March 2021). And if Aviva had raised that issue of unequalised GMP that day – as I think it should have done – the transfer would not have gone ahead. That's because the IFA couldn't have recommended a transfer to a pension scheme which refused to receive it. So the CETV deadline would have been missed and the OPS would have needed to recalculate it. It follows that in those circumstances, where the CETV would have required recalculation, I don't think it would be fair to award redress based on the original CETV sum.

As I said above when Aviva proposed a resolution to Mr S' complaint it recommended determining any loss based on a CETV recalculated on 23 March 2021. It knew the CETV would have required recalculation and it seems it allowed some time for the matter to be investigated by the IFA and the OPS to make the recalculation. I think that was reasonable.

That said, calculating a CETV is not a simple task. It requires a skilled actuary to do it and the final calculation is based on numerous factors. As well as the scheme's rules and its member's details, other factors are based on information from the financial markets on the day of the calculation. Those include things like interest, gilt and discount rates. Some of which may change regularly. That is why CETVs are typically initially only guaranteed for three months (increasing to six months once "secured") because they go up and down depending on fluctuations in the market. So, without skilled actuarial input, it would be very difficult to find out exactly what the CETV would be now if it were backdated to 23 March 2021. And I should explain that the OPS would be under no obligation to make such a calculation.

Instead I propose a simpler solution based on an average figure is fair. In doing so I'm aware that, at the time, CETVs were generally reducing. I've set out my reasoning below.

- The OPS quoted the initial CETV on 2 December 2020 at a sum of £536,885.
- The second CETV calculated on 18 June 2021 was £514,807. A difference of £22,078.
- The period between the two CETVs was 198 days. So, on average, the CETV sum fell by  $(£22,078 \div 198)$  £111.51 per day.
- 23 March 2021 was 111 days after 2 December 2020. So applying an average daily reduction of £111.51 would result in the CETV falling by £12,377.61 to £524,507.39 as of 23 March 2021.
- The IFA would then have had to run that figure past Mr S to ensure he was happy to go ahead with the transfer based on the recalculated sum. The IFA would also have had to ensure an alternative receiving scheme could accept it and do any other required due diligence at that time. I think it's reasonable to allow two weeks for that to happen, until 6 April 2021. But, I don't think the transfer would have taken place on that day.
- I've noted that once the OPS was in a position to arrange a transfer, which was 27 August 2021, it actually took it until 17 September 2021 (three weeks) to pay it. So allowing three weeks from 6 April 2021 would mean that the alternative scheme could have received the funds on 27 April 2021.

I therefore think it's fair for Aviva to calculate if Mr S has suffered a loss on his investments based on the sum of £524,507 being invested into his Aviva stakeholder pension from 27 April 2021.

I'm aware that, if the IFA had arranged a transfer to a provider other than Aviva then the performance of that fund is unlikely to be identical to the performance of Mr S' Aviva pension fund. But, I think that the IFA would have most likely recommended an alternative provider and fund which matched Mr S' attitude to risk which was similar to his Aviva pension. So, it's likely that an alternative fund would have performed in a broadly equivalent manner to Aviva's. It follows that I think it's reasonable for Aviva to only refer to its own scheme when calculating any loss.

Additionally, as Aviva's delays have been a source of distress and inconvenience for Mr S Aviva should pay him £250 compensation to address that.

For completeness I'll add that Aviva said that my award didn't address the OPS' delays in deciding whether or not to accept Aviva's requirement for a disclaimer signed by Mr S. But, if events had transpired as I think they should then the DB funds would have been transferred elsewhere and the OPS wouldn't have had to consider any disclaimer. So I don't need to account for any delay by the OPS for that matter, as it wouldn't have arisen. Finally, Aviva said it wasn't responsible for any delay between 16 March 2021 and 23 April 2021, as it doesn't have a record of receiving a request for information on that date. But the OPS has provided evidence that it requested information from Aviva on 16 March 2021. The things it asked for included Aviva's bank details and a copy of a recent HMRC certificate. It seems that Aviva sent this information to the IFA on 31 March 2021. So I'm satisfied that the OPS did request the information and that Aviva supplied it, although once received, it appears that some of that information was incorrect requiring the OPS to chase Aviva for the correct information. However, the delays here haven't affected my proposals for how Aviva should calculate any loss as set out above.

## **Putting things right**

My aim is that Mr S should be put as closely as possible into the position he would probably now be in if Aviva's actions hadn't caused delays. To do that Aviva should compare the actual value of Mr S' current pension against the fair value as set out below.

### **Actual value**

This means the actual value of Mr S' Aviva pension at the date of my final decision subject to any other deductions as described under the heading "fair value" below.

### **Fair value**

This is what Mr S' Aviva pension would have been worth at the date of my final decision if Aviva had concluded its work reasonably and without causing delay.

I think Mr S would have invested his CETV from 27 April 2021.

To compensate Mr S fairly, Aviva must:

- Establish what Mr S' Aviva pension is worth at the date of my final decision if he'd invested the CETV of £524,507.39 - together with any AVCs or other sums transferred - in the Aviva pension from 27 April 2021. This is the fair value.
- If the actual value is greater than the fair value, no compensation is payable.
- Any additional sum that Mr S paid into the investment should be added to the fair value calculation at the point it was actually paid in.
- Any withdrawal from the Aviva pension 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.
- If the fair value is greater than the actual value there is a loss and compensation is payable. If there is a loss, Aviva should pay into Mr S' pension plan to increase its value by the amount of the compensation. 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 Aviva is unable to pay the compensation into Mr S' pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. So 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 Mr S won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr S would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Unless it has already done so, Aviva should pay Mr S £250 to compensate him for his distress and inconvenience arising from Aviva's actions.

The payment resulting from all the steps above is the 'compensation amount'. The compensation amount must, where possible, be paid to Mr S within 90 days of his acceptance of my decision.

Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Aviva to pay Mr S<sup>2</sup>.

### **My final decision**

For the reasons given above I uphold this complaint. Aviva Life & Pensions UK Limited should pay Mr S the compensation amount as calculated above in my directions under the heading "putting things right". Aviva should provide Mr S with a breakdown of its redress calculation in a clear and simple to follow format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 12 September 2023.

Joe Scott  
**Ombudsman**

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<sup>2</sup> Income tax may be payable on any interest paid. If Prudential deducts income tax from the interest, it should tell Mr S how much it's taken off. Prudential should give him a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate