DRN-4381788

Financial Ombudsman Service

The complaint

Mrs R complains that Aviva Life & Pensions UK Limited ("Aviva") provided misleading information about the effective date a fund switch would be processed. She's unhappy with the way fund switches are handled as consumers don't have certainty about the price.

To put things right she seeks reimbursement of her losses arising from Aviva's pricing of her fund switches, total reimbursement of all fees paid since she moved her pension plans to Aviva, a refund of the mortgage interest she continues to incur, and additional compensation for the stress and extreme inconvenience caused by Aviva's failure to resolve her complaint.

What happened

Mrs R has a pension plan with Aviva which was previously a workplace scheme which she retained when she left that employment.

In December 2020/January 2021 Mrs R consolidated and transferred pension plans totalling around £205,395 from three other providers to her Aviva plan. At the relevant time her Aviva *"New Generation*" personal pension plan held 16,715 units in the Baillie Gifford American ("BGA") index fund (risk rating 9).

On Friday 5 November 2021 Mrs R telephoned Aviva to give instructions to switch her entire plan to BlackRock Sterling Liquidity ("BRSL") fund (risk rating 1). As she had called before close of business, she expected to receive the prevailing price of that day. In fact, Aviva processes fund switch instructions the following working day. The fund alteration statement showed the switch had been actioned on Monday 8 November 2021 after the unit price had changed, resulting in a fall of around £8,148 in her plan value.

Mrs R was aware investments can rise and fall but had timed her fund switch after careful research and monitoring of the market. So she feels it's unfair that as she gave her instructions before 5pm that day's price didn't apply. She says this wasn't made clear when she called, or in the client literature about her plan, meaning switching is a "*gamble*". Had she understood the way Aviva operates she wouldn't have instructed the switch at all. Subsequently, she discovered Aviva's pricing strategy had also worked to her detriment in 2020 when she originally switched from the fund she was in (BNY Mellon Consolidated Growth Lifetime) to BGA. On that occasion she'd emailed a completed switch form on 23 November 2020, but when Aviva processed it the following day the unit price had risen, meaning she purchased fewer units. Mrs R says if she'd known Aviva's switching policy she wouldn't have transferred her other plans to Aviva in the first place. And until her policy value is restored, she can't switch funds or withdraw the tax-free lump sum which she intended to use to repay her mortgage, so she's incurring mortgage interest unnecessarily.
Mrs R complained to Aviva in November 2021 that the way it handles fund switches breaches the regulatory principle of treating customers fairly.
Aviva's response in January 2022 explained that it had taken a business decision to use "effective price dates" for telephoned fund switches on Mrs R's product. This was because they'd become aware of a "*market exploit"* used by some customers. The letter set out the following explanation:

a) *For telephone switches before 5pm we'll use the effective price of the next working day*
b) *For telephone switches received after 5pm we'll consider these calls as being received the next working day. For example a call at 6pm on working day 1 will be given the prices as at working day 3, usually processed on working day 4.*

Aviva admitted its staff had given Mrs R incorrect information in three phone calls 2, 5 and 9 November 2021, so it apologised for this, offering compensation of £150, and assured Mrs R training would be given to ensure the right information was provided in future. But it wouldn't agree to honour the unit price on 5 November 2021, as Mrs R was never entitled to that.
In January 2022 Mrs R referred her complaint to this service, setting out her expectations in terms of redress. She reiterated that had she been made aware of Aviva's approach to fund switches she wouldn't have moved her pension plans to Aviva, which she'd chosen believing it offered the "*best customer service and range of investment funds*".

I issued a provisional decision on this case in July 2023 in which I made the following findings (in summary):

Aviva is entitled to use "effective price dates" for switch instructions received by phone. It doesn't offer same-day pricing for pension plan fund switches and never has.
Section 4.6.3 of the terms and conditions for Mrs R's plan which relates to "*Telling us to switch units already in your plan*" says the following:

*"We will normally base the value of the switched **units** on the price of the **units** on the working day we receive your **written instructions**.*
*Any method of accepting instructions other than **written instructions**, for example by email or fax, will be subject to our agreement, and the use of a later price relative to the time of receiving those instructions".*

I explained that "*written instructions*" was defined in the glossary section as instructions sent by post to Aviva's administration headquarters based in Salisbury. In 2021 Mrs R had given her instructions by telephone, and I said that meant acceptance of such instructions was subject to Aviva's agreement, and a later price than for written instructions would apply. But even if Mrs R had given her instructions in writing, she'd have no way of knowing exactly when they'd be received or what price would apply.

Mrs R called Aviva on Tuesday 2 November 2021 to ask about the process for instructing a fund switch. She was given a plan valuation and unit price as of close the previous day, which she was told wasn't guaranteed and could change. Mrs R was recommended to seek financial advice, to which she replied "*yes we have*". She was told if she phoned her instructions they'd be processed the following day, at "today's" price, which appears to be where the misunderstanding arose.

Mrs R called again on Friday 5 April 2021 and a different call handler gave her a higher plan valuation, based on "*close yesterday*". Mrs R said she wanted to switch 100% of the plan value into BRSL. After checking she'd instructed switches before and recommending she take financial advice, the call handler explained the switch would be processed on the next working day (Monday) and would take two working days to process. Mrs R confirmed she understood when the call handler clarified the plan wouldn't disinvest until Monday, using today's price.

So I said while it would've been helpful if Aviva had explained its "effective day" pricing more clearly, in that call Mrs R had been given the correct information about when the switch would be processed, and the day's price which would be used. Mrs R hadn't asked for the actual unit price which would apply, but even if she had, Aviva wouldn't yet know what price would apply when the switch was processed.

As Mrs R had expanded her complaint to include the original switch from BNY Mellon into the BGA fund, I listened to two calls Mrs R had with Aviva on 23 November 2020, in which she explained she wanted to carry out a fund switch and also transfer other plans to Aviva. Much of the first call related to the process for transferring in her plans from other providers to Aviva. But Mrs R did ask how long it would take to process a switch request which she intended to email. The call handler explained that if the emailed switch instruction was received before 5pm it would be processed using the price for the next working day. But if it was received after 5pm or she called after the phone lines had closed it would be processed two working days later, which is correct.

Later that afternoon, Mrs R called to check Aviva had received her emailed switch instructions, as she hadn't received an acknowledgement. She was told by a different call handler that Aviva may take a few days to deal with the instruction, but it would be processed as at the date of receipt. The remainder of the call focussed on the transfer-in process. I said I thought the call hander's intention here was to reassure Mrs R she wouldn't be disadvantaged if Aviva delayed processing her instructions. But overall I thought while Aviva's communication about its pricing policy could have been clearer, Mrs R had been aware the applicable price would be as at close of business the day after Aviva received her instructions.

I agreed with our investigator that our role isn't to make a business honour its mistake. Rather we aim to put someone in the position they would have been in, had the error not happened. So if Mrs R had been left in no doubt switch instructions whether given by phone or email received before 5pm would be processed the following working day using the close of business price, I thought Mrs R would still have gone ahead with the switch. And it made no sense for Aviva to unwind the switch, as it calculated her plan value would be significantly lower if she hadn't switched out of BGA when she did.

I understood why Mrs R was unhappy at the "gamble" of giving instructions without knowing the applicable price, but I didn't think that meant she been treated unfairly. Mrs R hadn't been given an incorrect price, she wasn't told any price, as the advisers couldn't know what it would be. And I thought the switch process would've been explained by the financial adviser she confirmed she consulted in 2020 and 2021. I wasn't persuaded the switching policy would've been the deciding factor in her decision to transfer her other plans to Aviva.

As Mrs R had been given the correct information about when the switches would be processed on 5 November 2021 and 23 November 2020 I didn't think it would be fair or reasonable to ask Aviva to backdate either switch to the day of receipt of the instructions, as they'd been processed correctly. There was no reason to refund any plan charges, and it was Mrs R's choice not to take her PCLS and delay repaying her mortgage. I thought Aviva's communication about its switch process could have been clearer to avoid any misunderstanding, but £150 was fair to reflect this.

So my provisional decision was I didn't uphold the complaint, but Aviva should pay Mrs R £150, if it hadn't already done so.

Responses to the provisional decision

Both parties responded. Aviva confirmed it had nothing to add.

Mrs R responded in detail, and also made a complaint about the service she'd received which has been responded to separately. In relation to the provisional decision she made the following points (in summary):

- The ombudsman has misunderstood Aviva's pricing strategy and misrepresented her understanding of it. Switch instructions are processed on day 2 using the price as at the close of business on day 2, not the close on day 1 (day of receipt).
- Aviva's terms and conditions are incomprehensible in relation to fund switches, and they have taken a business decision to depart from them.
- The only place their effective day pricing strategy is set out was the final response letter.
- Aviva has breached FCA guidance COBS 4.2 as they haven't communicated in a way which is clear, fair and not misleading.
- She wasn't given accurate information when she called, and had she known about the two-day lag she would have acted much earlier when instructing each fund switch.
- She wouldn't have transferred her other plans to Aviva, she'd have found another provider with a more transparent switching process.
- Unit prices cannot be viewed in the Aviva online account, Mrs R was monitoring live market fund prices via a third-party system.
- It's ridiculous to expect switch instructions to be sent by post, as this exposes customers to market risk.
- The ombudsman has shown bias towards Aviva, and the correct outcome is for the complaint to be upheld.

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.

Firstly I apologise if I misrepresented Mrs R's understanding of Aviva's pricing strategy in the provisional decision, I have corrected this in the final decision. I have also removed any reference to the unit prices being visible in the Aviva online account if this is not the case.

Mrs R says Aviva does not carry out fund switches in accordance with its terms and conditions. I agree the terms and conditions don't mention the effective day pricing strategy, nor do they include any reference to telephone instructions, and I suggested they should be updated. But they do set out how written switch instructions (received by post) will be processed, and state that instructions received by *any other method* will be processed subject to Aviva's agreement using a later price relative to the date of receipt. The examples given for "other methods" include email and fax. Telephone instructions are not specified, but I think it's reasonable to say telephone is another method by which instructions can be given, and so the "any other method" process would apply to telephoned instructions. And while they don't give complete clarity, I don't think the terms and conditions are unfair or misleading, so I don't consider they breach COBS 4.2.

I understand Mrs R's dissatisfaction at the lack of clarity about the applicable price, regardless of which method is used to give switch instructions. While it may not be possible to know when Aviva would receive written instructions, there is certainty about the delivery date of an email or when a phone call is received. Yet in each case, the effective price on the processing date couldn't be known in advance.

I said in the provisional decision that instructions received before 5pm on day 1 will be processed the following day (day 2) using the price as at the close of business on day 1. Mrs R says this isn't true, and that instructions received on day 1 are processed on day 2 using the price as at the close on day 2 (the day after receipt) as set out in the final response. As Mrs R suggests she took the decision to instruct the switches based on the incorrect information she was given, I listened again to the calls on 2 and 5 November 2021 to check exactly what was said.

In the 2 November call in which Mrs R was making enquiries about how she could give switch instructions, she was told the switch would be processed at a later date using "today's" price. While she didn't know what it would be, I think it was reasonably clear it would be different from the unit price she'd been quoted, which was as at close of business the previous day. And she was also told the valuation she'd been given wasn't guaranteed and could change.

The plan valuation Mrs R was given on 5 November was around £3,300 higher than on 2 November. In the 5 November call Mrs R gave her switch instructions, and the handler was careful to explain the funds wouldn't be disinvested that day, but on the next working day being Monday (8th) using the price as at the close of business on Monday, and the switch would take two days to process. I think this was the correct information. Mrs R's is unlikely to have been the only transaction regarding the BGA fund that day, so it was always possible that other "sell" instructions already in progress and during the day, would mean the unit price would be lower by the time Mrs R's switch was processed. But Mrs R didn't ask what price she'd get, although even if she had, I don't think Aviva would've been able to tell her. Nor did she say she only wished to proceed with the switch out of BGA if the fund value was the same as she'd been quoted or higher. Mrs R may have thought she'd timed her switch out of BGA just right, but she took the decision to switch herself, Aviva didn't advise her what to do, and she confirmed she'd taken financial advice. She was given unclear information about the timing of a switch in the 2 November call. But on 5 November when she actually gave her switch instructions, she was given the right information about how and when the switch would be processed.

In November 2020 Mrs R emailed her instructions to switch her fund out of the BNY Mellon Consolidation Growth Lifetime fund, which her workplace plan had been invested in, and into BGA. Mrs R called Aviva on 23 November, and the call handler told her the switch would be processed the next working day after receipt. Mrs R emailed the form on 23 November, and it was processed the following day, as confirmed in the Fund Alteration statement dated 24 November 2020. So I can't see Mrs R was misled on that occasion.

I clarified with Aviva the process and timing of fund switches. It said the following:

"We never do same day pricing. This is not something we have done or ever will as we operate end of day pricing and not live pricing. We can never give a customer a price they will get as we use the price at the end of the day the instruction is received. So received 23 Nov actioned 24 Nov using end of 23 Nov price. We have never changed this process".

Aviva is entitled not to offer live pricing to avoid people "playing the market" which increases volatility. In either call Mrs R wasn't misled about the price she'd get, nor was she quoted a price which Aviva then failed to honour. When she was given valuations she was told they could change. If Mrs R's "loss" arose because she attempted to time her switches with the aim of buying into BGA when the price was low, and then switching out of BGA and into a cash fund when the price was high, that's not something I can hold Aviva responsible for. Aviva's terms and conditions don't mention the effective day pricing strategy for telephone instructions, but Mrs R's switch instructions were handled in line with the process for "other methods" which I think is reasonable.

Mrs R said that had she been made aware of Aviva's switching policy she wouldn't have stayed with Aviva when she was given the option to convert her workplace pension to a personal pension, nor would she have transferred her other plans to Aviva. I can't say for sure what she'd have done, but I don't think Aviva's position is unusual within the industry. She may have shopped around for a self-invested personal pension which offers live pricing, but this flexibility often comes with higher charges, and may not be appropriate if Mrs R only intended switching funds once a year. Mrs R can of course move her pension away from Aviva if she wishes to. But I've seen no evidence she asked Aviva about its pricing strategy before making her decision, and she didn't query it in 2020 when she originally transferred into BGA. As Aviva has never offered live pricing I think Mrs R would have been told this from the outset if she'd asked, so I don't consider Aviva needs to do anything to put this right. I also see no justification for a refund of the plan charges as these aren't related to the switching policy.

So while I appreciate Mrs R will remain unhappy, I see no reason to depart from my provisional conclusions, which is that overall Mrs R was told the right information prior to instructing both switches, and £150 is sufficient to compensate for the incorrect information she was given.

My final decision

So my decision is I don't uphold the complaint in the sense the offer made by Aviva Life & Pensions UK Limited is sufficient to put things right. So it should pay Mrs R £150 if it hasn't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 1 November 2023.

Sarah Milne
Ombudsman