

Ombudsman's Determination

Applicant	Mr Y
Scheme	Fraser Douglas Marketing Limited Retirement Benefit Scheme (the Scheme)
Respondent	Aviva Life & Pensions UK Limited (Aviva)

Outcome

1. I do not uphold Mr Y's complaint, and no further action is required by Aviva.

Complaint summary

2. Mr Y complained that Aviva incorrectly deducted commission from a single premium lump sum he paid into the Scheme.
3. Further, that Aviva's delays in refunding the commission, impacted his right to cash in or transfer his benefits to his self-invested personal pension (**SIPP**). This resulted in investment loss, distress and inconvenience.

Background information, including submissions from the parties

4. The sequence of events is not in dispute, so I have only set out the main points. I acknowledge there were other exchanges of information between all the parties
5. In 1992, Fraser Douglas Marketing Limited (**the Principal Employer**) set up the Scheme.
6. Mr Y was a Managing Trustee and a member of the Scheme. He made a variety of payments into the Scheme, with the last regular monthly premium made in 2003.
7. In September 2018, in advance of his possible retirement, Mr Y paid a further a single premium lump sum of £5,000 to the Scheme. A commission of £280 was deducted and paid to Ayrshire Financial Services Limited (**AFS**), the company who had originally assisted setting up the Scheme.
8. On 5 September 2018, Aviva, the policy provider, acting on Mr Y's request, issued him with a Transfer letter confirming the available transfer value of the benefits in the Scheme.

9. In March 2019, Mr Y contacted AFS and discovered that they no longer employed his financial adviser. Consequently, he wrote to Aviva and advised that AFS should be removed as representatives and the commission refunded. Aviva agreed to recover and reapply the commission to Mr Y's account.
10. On 10 April 2019, Aviva issued Mr Y with a transfer pack.
11. On 16 April 2019, the Principal Employer gave notice to the Managing Trustees of its intention to cease paying contributions to the Scheme.
12. On 18 April 2019, Aviva informed Mr Y that the commission would be refunded.
13. On 10 May 2019, Mr Y attended an appointment with Pension Wise to discuss his retirement options.
14. On 18 May 2019, the Managing Trustees, including Mr Y, wrote to Aviva to confirm that the Scheme would be wound up.
15. On 21 May 2019, Aviva received wind-up notices from the Trustees of the Scheme.
16. On 23 June 2019, Mr Y contacted Aviva to chase the commission refund.
17. On 24 June 2019, Aviva sent Mr Y a Retirement Options Pack. This also provided information about the value of the fund and the transfer value.
18. On 26 July 2019, Mr Y said he received an Annual Review letter from the Scheme, this was after notice had been given about winding up the Scheme.
19. On 23 September 2019, Mr Y again telephoned Aviva and chased the commission refund.
20. On 24 September 2019, Mr Y emailed Aviva. He said he wished to set up a drawdown of his pension benefits. Mr Y said he intended to take all the available tax-free cash with the residual remaining invested with Aviva. However, he had been informed he needed to obtain financial advice. He deemed this as unnecessary and enquired whether this was a legal requirement.
21. On 3 October 2019, Mr Y telephoned Aviva to chase a response to his email from 24 September 2019.
22. On 3 October 2019, Aviva replied to Mr Y regarding the drawdown of his pension benefits. It said it was normal procedure for it to require members to obtain independent financial advice as the drawdown product and its mechanics were complex. However, if Mr Y accepted responsibility for the decision, it would not insist on this.
23. On 7 October 2019 and 8 October 2019, Mr Y telephoned Aviva and again chased the commission refund.

24. On 9 October 2019, Aviva told Mr Y that the person who was dealing with the refund of the commission was on long term sick leave, and the matter had been assigned to someone else.
25. On 5 December 2019, Mr Y telephoned Aviva. He requested a valuation statement and an update on the commission refund.
26. In January 2020, Aviva's attempted, as shown on its internal emails, to reverse the original transaction and reapply the amount on nil commission terms. However, it transpired that the commission must be reclaimed manually.
27. On 5 February 2020, Aviva emailed Mr Y and confirmed it was refunding the commission.
28. On 10 February 2020, the commission was refunded and, on 19 February 2020, Aviva emailed Mr Y to confirm the same.
29. On 20 February 2020, Mr Y asked Aviva to produce a schedule to show the commission refund.
30. On 14 July 2020, Mr Y telephoned Aviva. He said he had emailed Aviva but had received no reply. He wanted a current valuation statement with a fund list and a switch form.
31. On 15 July 2020, Aviva sent Mr Y a statement of investment, details of Aviva funds available and a fund switch form.
32. On 30 July 2020, Mr Y said he received a second Annual Review Letter, again after notice had been given about winding up the Scheme.
33. On 4 August 2020, Mr Y telephoned Aviva as he had not received the paperwork he had requested.
34. On 5 August 2020, Aviva issued another statement of investment with details of the funds available and a fund switch form. It also stated that the current transfer value was £63,395.05.
35. On 7 August 2020, Mr Y telephoned Aviva regarding the Scheme wind up. He complained about Aviva's delays to deal with the wind-up notices. Further, he said that the list of funds available to him through Aviva underperformed other types of arrangements on the open market.
36. On 10 August 2020, Mr Y wrote to Aviva. He complained that the winding up of the scheme had not been completed, and that the fund options were too restrictive and underperformed other fund options available on the market. Mr Y also complained about the delay in recovering the commission and the overall service he had received. He requested that the Scheme be wound up as soon as possible and the proceeds invested into his SIPP. He also asked for redress for the delays in the processing of the paperwork and in the recovery of commission. He said that the fund

had remained stagnant over the year, whilst progressive increases in value had been noted with other SIPP arrangements.

37. On 10 September 2020, Aviva partially upheld Mr Y's complaint. The delay relating to the commission recovery was upheld. It was also noted that a valuation statement was not issued on Mr Y's first request, and he had not received replies to emails causing him to telephone multiple times.
38. In relation to the list of available funds, Aviva explained these could not be changed, and the fund performance was due to market issues, so this part of the complaint was not upheld. Further, Mr Y could have chosen to transfer to another product. In relation to the scheme wind up, whilst the notice was received in May 2019, once the benefits had been removed from the scheme it would then be wound up. A transfer pack had been issued to Mr Y on 10 August 2020 and a Retirement Options pack on 21 June 2019. Aviva had arranged for these to be re-issued. Aviva said it would pay £250 in recognition of its errors.
39. On 11 September 2020, Aviva issued a Retirement Option Pack with a transfer value of £63,654.46.
40. On 21 September 2020, Mr Y submitted his signed transfer Discharge Form and the transfer disclaimer. This was received by Aviva on 23 September 2020.
41. On 9 October 2020, Aviva received a letter from Fidelity requesting the transfer, but it did not include the required transfer forms.
42. On 19 October 2020, Mr Y telephoned Aviva for an update on the transfer.
43. On 20 October 2020, Aviva sent the transfer agreement forms to Mr Y to be completed.
44. On 23 October 2020, Mr Y telephoned Aviva to complain. He said he had received transfer forms which he had already completed and returned, including the wind-up paperwork.
45. On 24 October 2020, Mr Y requested that his complaint be escalated to the Chief Executive Officer (**CEO**) at Aviva.
46. On 26 October 2020, Aviva emailed Mr Y. It apologised for misinforming him and asking him to complete the transfer agreement form again. Aviva clarified that it had received Mr Y's transfer forms, and it was waiting for Fidelity to return the transfer undertaking.
47. On 29 October 2020, Aviva issued Mr Y with a further complaint response. Aviva did not agree that it had caused any delay in the process for transferring the policy. It said any fluctuations in the fund value were due to the performance of the stock market. The administrative charges associated with the policy could not be cancelled and would remain in effect until the date the policy was disinvested. Nevertheless, Aviva accepted that it had provided conflicting information about what forms were

outstanding on 21 October 2020. Aviva apologised and paid £100 for any inconvenience and upset it had caused.

48. On 11 November 2020, Aviva's Chief Operations Officer (**COO**) wrote to Mr Y and agreed to pay a further £250 in recognition of his distress and inconvenience. Additionally, the COO said Aviva would undertake an investment loss assessment once the transfer completed.
49. On 23 November 2020, Aviva wrote to Mr Y and said that it had completed the transfer of £65,265.16 to Fidelity. This included late payment interest of £5.86.
50. On 15 December 2020, Mr Y asked for an update on his complaint. He queried the letter he had received from Aviva to Fidelity, dated 23 November 2020, stating his transfer had been enhanced by £5.86 to account for late payment. In addition, he questioned the further copies of wind-up notices that he had received with the same correspondence. He explained that he had previously sent these documents to Aviva in the spring of 2019.
51. On 6 January 2021, Aviva wrote to Mr Y. Aviva did not accept it had delayed the transfer to Fidelity by 13 months. Aviva said there was no record or evidence to show Mr Y intended to transfer in September 2019. There was no contact between Mr Y and Aviva between February 2020 and July 2020. Mr Y was still considering switching Aviva funds in July 2020. Aviva was unaware that Mr Y was transferring until his complaint on 10 August 2020. Aviva had paid £5.86 interest for late payment. A transfer confirmation had been issued to Mr Y on 23 November 2020, but he had not received this until 9 December 2020. Aviva apologised for this and said it was due to a backlog.
52. The single premium lump sum paid in 2018 was applied using full commission terms with an allocation rate of 97%. Whilst the commission was not reclaimed until February 2020, the policy was amended in July 2019 when the single premium lump sum was corrected using enhanced terms (i.e. the allocation rate was increased to 102.6%). As a result, Aviva said that more units were purchased by the contribution.
53. Aviva said that the loss assessment calculation had found that it had failed to allocate the single premium lump sum in accordance with Mr Y's instructions. If the single premium lump sum had been applied correctly, on 16 November 2020 (the cancellation date used to transfer the funds to Fidelity), the premium would have secured an additional £353.41. Aviva had arranged to pay this additional contribution to Fidelity.
54. In relation to the Scheme wind up, Aviva explained that it does not wind up a scheme until all benefits have been removed. Therefore, this would not have been possible until the transfer to Fidelity had completed. Aviva had, however, sent additional wind-up notices to Mr Y, in November 2020, which he did not need as he had already issued Aviva with the correct notices. For the overall administrative errors, Aviva said it would pay Mr Y a further £200 for the distress and inconvenience it had caused to him.

55. On 1 February 2021, Mr Y emailed the COO at Aviva. He said that before the transfer, Aviva had been obstructing the process of any action with his pension. He said that the pension with the Scheme was one of the three pension arrangements he had which matured on his 65th birthday, and that payment from the arrangements were all timed to coincide, with the other two being more or less on time. He said he would have moved his pension with the Scheme in 2019 by crystallising or transferring the funds. He said that although the Scheme could not wind up until the benefits were removed, Aviva had not provided confirmation that the commission owed to him had been reapplied to his account until 6 January 2021. He therefore said Aviva was liable for the losses he sustained during this period. He agreed that he had enquired about the transfer value being switched into Aviva funds but that this was a direct result of the “sheer frustration” caused by Aviva’s lack of information and progress and that this was not to be interpreted as the option he really wanted.
56. On 22 February 2021, Aviva wrote to Mr Y and acknowledged that he could have transferred earlier if he had received confirmation that the commission had been reclaimed and he was satisfied that the value of the Scheme benefits was correct. He had also experienced barriers when attempting to set up the drawdown, and the fund choice on his policy was limited but fund switching was always an option available to him. Mr Y’s policy continued to be invested until the transfer took place and the transfer value was higher than in 2019. Aviva further accepted that the figures Mr Y had provided demonstrated he would have gained financially if he had transferred his Scheme benefits to Fidelity in 2019, but there was no evidence that he intended to do so at that time.
57. Following the complaint being referred to The Pensions Ombudsman (**TPO**), Mr Y and Aviva made further submissions that have been summarised below.

Mr Y’s position

58. He had tried to take his pension in May 2019 to coincide with this 65th birthday. However, around this time there had been an outstanding administration enquiry in relation to the commission refund which was not resolved in a timely fashion.
59. Over the lifetime of the policy, the ownership had changed several times, and he would have never agreed to his pension being administered by Aviva.
60. He made the single premium payment of £5,000 to the Scheme in advance of his ‘possible retirement’.
61. He intended to activate a drawdown or transfer his benefits in the Scheme to his SIPP around mid-2019 having made two other successful transfers in July 2019 and August 2019. He provided a statement from Fidelity which showed the other two payment transfers.

62. Aviva contend that there is no evidence that he wished to transfer in 2019, but it was clear that his enquiries and concerns collectively indicated that he was in the process of making significant changes to his policy. Further, he attended an appointment with Pension Wise on 10 May 2019.
63. He transferred eventually, but he could have done so earlier if the paperwork had been in order. He said most of the time had been taken up with reclaiming the incorrectly deducted commission. He was unable to transfer or activate drawdown on his pension until the commission issue was resolved.
64. He said that if the transfer had taken place around the time he had planned, his pension would have increased by around £10,000.
65. He only considered switching to other Aviva funds, as a last resort, and due to pure frustration at the time taking to refund the commission.

Aviva's position

66. It accepted that there had been several errors in its dealings with Mr Y. However, it did not accept it was responsible for delaying the transfer of the funds to Mr Y's Fidelity SIPP by around 13 months.
67. There is no evidence on record to suggest Mr Y had decided to transfer his funds to Fidelity in 2019. In July 2020, Mr Y was still considering switching into different Aviva funds. Aviva was unaware of Mr Y's intention to transfer until his complaint on 10 August 2020. The transfer instruction was not received from Fidelity until October 2020.
68. The available fund choice on Mr Y's policy was limited but fund switching was always an option available to him. Mr Y's policy continued to be invested until the transfer took place and the transfer value was higher than in 2019.
69. Aviva does not wind up a scheme until all benefits have been removed. Therefore, this would not have been possible until the transfer to Fidelity had completed.
70. Whilst the commission was not reclaimed until February 2020, the policy was amended in July 2019 when the single premium lump sum was corrected using enhanced terms (i.e. the allocation rate was increased to 102.6%). As a result, more units were purchased by the contribution.
71. A loss assessment undertaken by Aviva had found that it had failed to allocate the single premium lump sum paid in September 2018 in accordance with Mr Y's instructions. If the single premium lump sum had been applied correctly, on 16 November 2020 (the cancellation date used to transfer the funds to Fidelity), the premium would have secured an additional £353.41. Aviva had paid this additional contribution to Fidelity.

72. Following the payment of benefits, Aviva did not send its usual guidance to Mr Y. It would take steps to remedy this but as Aviva was not the Scheme Administrator, it was the Managing Trustees' responsibility to report the Scheme wind up.
73. It has upheld or partially upheld complaints about the service and has paid approximately £800 compensation for any distress and inconvenience caused.

Adjudicator's Opinion

74. Mr Y's complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-

- If Mr Y wanted to transfer the benefits from the Scheme in 2019, it was his responsibility, as the member and the Trustee, to apply in writing, in accordance with Section 95 (1) of the Pension Scheme Act 1993 (**the 1993 Act**). Mr Y did not apply to transfer in 2019 and his intentions, therefore, whether positive or not, did not assist his argument.
- While the commission was incorrectly deducted and the refund was significantly delayed, a transfer request was neither made nor rejected at the time Mr Y said he wanted to transfer. In the light of this, Mr Y's submissions that he was unable to transfer due to the delay of the refund was neither persuasive nor reasonable.
- While there was nothing wrong in Mr Y wishing to ensure the transferred amount included the commission refund the amount was nominal and should not have prevented him from submitting a transfer application if he so intended.
- In August 2019, Mr Y considered keeping the funds invested with Aviva and drawing down his Scheme benefits. The commission was refunded in February 2020, but he did not request a transfer at that time.
- In July 2020, he considered switching into different Aviva funds. While he said this was as a last resort due to Aviva's delays, this evidence showed that Mr Y was considering his options, until a decision to transfer was made and the discharge paperwork submitted in September 2020.
- Once the discharge paperwork was submitted in September 2020, a transfer payment to the SIPP was made on 23 November 2020, and based on these facts, the transfer was not delayed. While a late payment interest had been made, the transfer occurred well within the statutory time period allowed.
- Aviva had failed to deal with or respond to the wind-up notices submitted in May 2019. This amounted to maladministration. Aviva should have sought instructions from the Managing Trustees on how they wished to secure the benefits in the Scheme. Nevertheless, the Scheme could not be wound up until

a decision was made about the benefits and Mr Y, as a Managing Trustee, should have provided standing instructions.

- Aviva also failed to follow process and procedure when it failed to send the Managing Trustees guidance on winding up the Scheme once the benefits were transferred. Nevertheless, Aviva said that it was not Scheme Administrator, so it was the Managing Trustee's duty to report the wind up to HM Revenue & Customs (**HMRC**) and The Pension Regulator (**TPR**) and it had since written to Mr Y about this.
- There were instances of maladministration, but the complaint in relation to the delay to transfer in 2019 and the investment loss was not found. Any compensation was therefore limited to non-financial loss.
- Non-financial compensation is not meant to be punitive, but offers a payment for the actual distress and inconvenience caused and Aviva had already paid Mr Y £800 which was broadly in line with TPO guidelines.

75. Mr Y did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.

76. Mr Y provided further comments which do not change the outcome. I agree with the Adjudicator's Opinion and note the additional points raised by Mr Y as follows:

- Aviva had frustrated the entire process of the wind up and transfer from the outset and by its maladministration, and it showed a lack of competence which was extremely costly to a small pension scheme, its trustees and beneficiaries.
- TPO had seen the paperwork and is aware of the timescales involved and whatever 'expectations of Scheme Trustees' and interpretation of 'regulations' might have to be applied.
- Aviva had written to him recently in relation to another pension which they had calculated incorrectly. It had taken Aviva 5 years to uncover their error. While this related to a different pension, it highlighted that the money transferred by Aviva to Fidelity might also not have been correct at the time. He had little confidence in Aviva whom he did not choose to have as an administrator of his funds.
- Aviva had shown serious flaws in the administration worthy of reporting to the Financial Conduct Authority, Prudential Regulation Authority or HM Treasury via the local MP.

Ombudsman's decision

77. Mr Y claimed that, but for the delays of Aviva to refund the commission deducted from his final premium lump sum in 2018, he would have activated a drawdown of his Scheme benefits or transferred his benefits in the Scheme to Fidelity in mid-2019. To

prove his intentions, he sought to rely on a statement from Fidelity which showed that he made two other transfers that year, one in July 2019 and one in August 2019. However, I am not persuaded that Mr Y was intent on making a transfer at that point. Rather, from the information I have available to me, he was still considering his options. For example, while he had in September 2018, received details of his available transfer value he did not act upon it. Instead, a year later in September 2019, his discussions with Aviva centred on the possibility of drawing down his benefits, with the residual amount remaining invested with Aviva.

78. As a result, and in the absence of any valid request being made to transfer his benefits at the point, there is no evidence that Mr Y made a transfer application in 2019, and nor is any evidence to indicate that he put Aviva on notice that he intended to transfer to Fidelity at that time. Mr Y argued that his enquiries and concerns collectively indicated that he was in the process of making significant changes to his Scheme benefits, but making enquiries and raising concerns is not the same as making an application to transfer to Fidelity.
79. The matter might have been different if Aviva had failed to provide the transfer paperwork or, having provided the paperwork, and received the application, failed to proceed on time because of the outstanding commission. However, no application was made, received, rejected or delayed in 2019, and the evidence does not support a finding that Mr Y would have more likely than not transferred to Fidelity but for the issues surrounding the commission.
80. The evidence provided showed that, on 24 September 2019, Mr Y emailed Aviva to query whether he required financial advice to set up a drawdown of his Scheme benefits. He received a reply on 3 October 2019, but did not progress the matter further. Between October 2019 and January 2020, he was in conversation with Aviva in relation to the commission, which was refunded in February 2020. But again, there was no written request to transfer, or indeed to proceed with the drawdown, and instead, in July 2020, Mr Y considered switching his funds within the Scheme. While Mr Y said this was only because of his frustrations over the delays experienced with Aviva, it contradicts his argument that the transfer decision was already made.
81. I note Mr Y has argued he was prevented from accessing his benefits through income drawdown, however, Aviva was willing to waive the requirements to appoint a financial adviser and therefore I do not find that Aviva prevented him from drawing down his pension.
82. There was a delay to refund the commission, which I find amounts to maladministration – although I note that Aviva argue (although it is not clear when Mr Y became aware of this) that “although [it] did not reclaim the commission from the IFA until February 2020, the amendments to the policy records were made in July 2019 and the single premium corrected...”.
83. I acknowledge that the delay to refund the commission, the failure to respond to the wind-up notices, and the error to allocate the last premium as requested, although

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mitigated in part by the efforts made by Aviva to put matters right over the course of the complaint prior to it reaching my office, will have caused Mr Y significant distress and inconvenience. Aviva have however paid Mr Y £800 in recognition of the distress and inconvenience caused to him which I find is satisfactory in the circumstances, and more than the £500 award that I would normally award for significant distress and inconvenience.

84. I do not uphold Mr Y's complaint.

Dominic Harris

Pensions Ombudsman
9 December 2024