DRN-4286739

Financial Ombudsman Service

The complaint

Mr C says Aviva Life & Pensions UK Limited (Aviva) informed him of incorrect transfer values for his personal pension over a period of years. He says this impacted on decisions he made about funding his income in retirement.

Mr C is represented by his independent financial adviser (IFA).

What happened

Mr C had a personal pension with Aviva which effectively entitled him to take 100% of the benefits from the plan as tax-free cash (TFC). His money was invested in a with-profits fund. The normal retirement date (NRD) for his policy was when he reached 65, in July 2021. At this point his funds were moved into cash. The value of his fund was guaranteed not to fall below that achieved at his NRD.

Between January 2019 and March 2021 Mr C and his IFA were notified of the transfer value for his personal pension on multiple occasions. At its height, in August 2020 it was said to be valued at £35,878. But by the time Aviva issued a quote in March 2021 this had fallen to £29,853.

Mr C raised a complaint with Aviva about the falling value of his personal pension. On 8 April 2021 it responded in the following terms:

"Although the values quoted between 28 January 2019 and 30 September 2020 increased, the value we quoted on 7 March 2021 decreased because the final bonus is currently lower than it was in 2019 and 2020. Any final bonus due when you take your benefits could be higher or lower than it was in March 2021."

Mr C wasn't satisfied with the response he received and sought more information about what had happened. Aviva responded on 22 July 2021. This time it provided an explanation about how his premiums had been used to purchase funds. It went on to say:

"Your policy is invested in the Providential Mutual With-Profit fund. The initial premiums you paid purchased a lower rate fund, with premiums paid after the initial period purchasing a higher rate fund. The higher rate fund increases by a guaranteed interest rate of 3.25% per annum. Where a regular bonus rate is declared, the bonuses are added to both the lower rate fund and the higher rate fund. Both funds and the accrued bonuses form the guaranteed minimum amount that would be paid on retirement."

"On retirement, we may also add a final bonus. The final bonus is a balancing item that aims to pay the difference between the guaranteed benefits and the asset share subject to smoothing. For clarity, the asset share is the premiums paid rolled up with investment returns and taking charges and expenses into account. Smoothing is a feature of With-Profits which aims to restrict pay-out movements from one year to the next. Essentially, this enables returns from good years to subsidise years where returns are poor."

"The transfer value calculation aims to pay asset share and uses a different calculation but should tend towards the maturity value in the last year."

"Unfortunately for your policy it seems the transfer value was higher last year and hasn't smoothed into the maturity value as we would like. This is due to the different way the value is calculated from a maturity value."

"To ensure you are receiving a fair value at maturity we have checked your maturity value against the asset share we hold for this policy and are satisfied that the current value is appropriate."

"Please accept my apologies that last year's value was too high."

Aviva had still not got to grips with Mr C's concerns. So, his IFA wrote to it on 15 September 2021. He noted that it wasn't simply that it had provided an incorrect pension transfer valuation in 2020, but the problem with its methodology seemed to have been flawed for some years. He summarised his concern in the following terms:

"*That information received, will affect the decision a client makes on deciding whether or not to retain a policy, to transfer, or to draw benefits, which your previous response had failed to recognise. This being the case, your errors have led to Mr C being substantially disadvantaged as his final pension value has now fallen by 15%. This has not been acknowledged in your response and needs to be addressed by Aviva through some compensatory process."*

Aviva responded to Mr C's IFA on 22 October 2021. This time it had referred his complaint to its actuarial department, which provided the following input:

'Regretfully, the method used to calculate the transfer values has been overvaluing this policy type. We usually aim for the transfer value to tend towards the retirement value, but unfortunately this has not been the case. The method used to calculate transfer values is currently being reviewed to ensure transfer values better reflect the investment returns of the policies and are consistent with retirement values. However, this does not resolve the issue of higher transfer values being provided in past years and for this we are deeply apologetic."

"It is important to note that the flaw in the system is that your quoted transfer values were too high, so with corrected methodology would reduce values in the future. The corrected method will simply reduce the transfer value so that it moves smoothly towards the maturity value, which is dictated by the asset share."

"Please accept our apologies but we are unable to compensate the policyholder as, having checked their maturity value against the asset share for their policy, we can confirm the retirement value provides a fair return on the premiums given the investment returns of the fund over the duration of the policy."

Aviva apologised for what had happened, acknowledging it had made a mistake. It said:

"Whilst I realise you feel our errors have led to Mr C being disadvantaged as his final pension value has fallen by 15%, this is not the case. The actual value we've quoted is correct, whereas previously quoted values were incorrect. These were not actual values and they were not guaranteed."

Mr C remained dissatisfied with Aviva's position. His IFA brought his complaint to this Service on 19 April 2022, in the following terms:

"Mr C has a pension plan with Aviva, that was invested in a With Profits fund. Over a period of 2-3 years…Aviva has admitted that it made a number of mistakes in providing inflated valuations to the pension during this timeframe, see final response letter attached, but has taken no further action."

"Mr C feels that different decisions would have been made with the pension had correct values been provided. The pension is available as 100% TFC and will pay out a lump sum death benefit; beneficiary drawdown for example is not available. Given Mr C's age and life

expectancy the pension could have been drawn without incurring tax, invested in his non-pension portfolio and produced a better investment return. It's not the investment return from Aviva that is the issue, it is the ongoing correspondence quoting incorrect and inflated fund values that led to a decision by Mr C to retain the pension. Had correct values been provided, different decisions could have been considered."

Mr C's IFA noted the poor returns on his fund between 2017 when it was valued at £29,125 and the final transfer value in 2021. Had this low return been understood earlier, then it would've advised him to take a different course of action. Specifically, instead of taking income from his general investment fund, where he enjoyed high rates of return, he'd have advised Mr C to utilise his TFC from the Aviva pension first.

An Investigator considered Mr C's case and upheld it. She thought he'd suffered a loss of expectation as a result of Aviva's mistake in how it calculated the transfer value of his pension. She thought it should pay him £200 in recognition of this. But after considering further evidence from the IFA including suitability reports it provided him with in June 2020 and July 2021, she didn't think there was sufficient evidence to show he'd have acted differently had he been provided with more accurate information.

As both parties couldn't agree to the Investigator's view, Mr C's complaint was passed to me to review afresh. I issued my provisional decision at the end of June 2023 and requested further information from both parties to assist my final deliberations. Both parties have provided further submissions, which I've considered carefully in arriving at my final decision.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr C's complaint, but not to the extent he'd like. I'll explain why.

I've considered the extensive regulation around transactions like those performed by Aviva for Mr C. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like Aviva. As such, I need to have regard to them in deciding Mr C's complaint.

There's no dispute about what went wrong here. Aviva has apologised for providing Mr C with incorrect valuations for his pension policy over an extended period of time. It has acknowledged a flaw in its methodology, which presumably applies to other customers in a similar position to Mr C. A systemic issue has been identified, although I need to focus here on the individual case and circumstances.

Mr C has confirmed that his representative started providing advice to him about his Aviva pension from around 2015. His Aviva pension benefits were drawn shortly after maturity of the policy as he reached 65 in July 2021.

At the heart of this complaint is what Mr C would've done had he been provided with correct information about the value of his Aviva personal pension in prior years. In responding to the Investigator's findings and conclusions, Mr C's representative said:

"In our view, the key aspects that have been misunderstood are as follows:

- *[Mr and Mrs C] began to draw income from January 2021 of £3,000pm from their portfolio. Income had ceased in 2020 because of the Covid pandemic; however, prior to Covid [they] had withdrawn [sentence ends].*
- *At that time, the portfolio had provided investment returns of 46.10% over 5 years. In the same period, the Aviva pension value had increased from £29,125 to £35,878, some 23.1%. This meant the pension was growing ahead of normal retirement date and because of the favourable IHT position for pensions, was kept in place. However, the pension value was subsequently recalculated to £30,175.*
- *As you've acknowledged, at [Mr C's] normal retirement age, the pension was moved into a Cash fund. It had a 1% AMC and therefore the fund would be guaranteed to lose value. It was at that point the decision was made to realise the value. It was 100% tax free and there was no prospect for further growth.*
- *This action demonstrates that if the pension values provided by Aviva had been correct, a different course of action would have been taken earlier. If it had been known that the value of £29,125 in 2017 had grown to £30,175, it would have been realised much earlier, with less income being withdrawn from their portfolio.*
- *You've also highlighted that in a report I've stated that typically, pensions are retained because of the IHT position when compared to cash and GIA. This is because, typically, when wider investment markets are rising so are pension values. In this instance, we only discovered the situation was not typical after the event."*

I've reviewed the suitability letters Mr C's IFA produced for him and his wife in June 2020 and July 2021. I think the Investigator was right to highlight the significance of its recommendation from the latter which was made in the following terms:

"We discussed the option of purchasing an annuity with your Aviva pension fund. You advised that you did not want to secure an annuity and that your preference is to receive your pension benefit as a cash lump sum. You intend to utilise the money to put towards purchasing a holiday home in the future."

"You are aware that by accessing your pension fund the funds will be brought into your estate for inheritance tax purposes immediately on crystallisation. Currently, the Aviva pension is excluded from IHT. However, death benefits are usually payable as a lump sum, meaning that if you were to pass away prior to [Mrs C], the funds would still form part of [her]

estate. You would like to maximise the opportunity for drawing your pension tax free with the intention of using the monies to help to fund the purchase of a holiday home. This means that you can hold the funds in cash, but without the ongoing fees that would apply to the Deposit Fund, which has an Annual Management Charge of 1%."

I think the argument being made by Mr C's representative isn't about how he was planning to use the cash from his Aviva pension in 2021, but that had he realised its 'real' value earlier, he'd have taken the benefits before his NRD and used these to supplement his income, instead of drawing income from his general investment account.

This argument relied on a number of assumptions, which I invited both parties to provide further evidence about.

Mr C has provided information about the value of his Aviva plan between 2009 and 2021. This shows it wasn't static. It remained invested up until his 65th birthday. Mr C said of its performance:

"The data below shows the performance of the pension since Aviva became the pension provider. It is clear that there has been steady growth, with some fluctuations and of course, valuations are dependent on the day / date they are given."

"Note that there were high increases in the transfer value in 2013, 2015, 2017, and then finally in 2019. These large increases occurred regularly and are important because they provide evidence that a consistent method of transfer valuation was being applied."

"This performance provided me and BD with reassurance that we were making the best decision to leave it invested."

Aviva has acknowledged its fund values reported to Mr C over time were inflated. So the base value was too high. But as the data he's supplied shows, his pension fund was benefitting from investment growth (positive and negative) up until his NRD.

Mr C's representative told this Service his general investment portfolio had provided a return of 46% over 5 years. Over the same period his Aviva pension had grown around 23%:

"*This meant the pension was growing ahead of normal retirement date and because of the favourable IHT position for pensions, was kept in place…"*

In bringing Mr C's case, his representative said if it had known the value of his Aviva pension in 2017 of £29,125 would only have grown to £30,175, it would've been realised much earlier, with less income being withdrawn from [Mr and Mrs C's] general investment portfolio. I'm not persuaded by this argument which is about investment performance and relies on hindsight. I don't find it telling in the context of Mr C's case.

I asked Aviva to provide me with a 're-worked' run of what the maturity valuations for Mr C's pension would've been over the period in question, it said:

"The maturity value is made up of the guaranteed benefits already purchased plus any final bonus declared at the date of maturity. The aim is that the maturity value should be a fair reflection of the fund performance over the term of the policy."

"We are unable to provide another set of historic transfer values as we only have the method that was in use at the date the values were originally provided."

"As mentioned in our previous response the transfer value was overpaying relative to the maturity value, however this was because the methods were mis-aligned…"

Based on the evidence available, Mr C and his representative haven't satisfied me that had Aviva provided more aligned transfer and maturity valuations, this would've had a material effect on his decision making. I say this because I've concluded it's more likely than not what mattered most to him was that his Aviva pension was growing; that it was shielded from IHT provisions; and that it provided an opportunity to maximise the tax-free cash he could receive.

What is clear is that Aviva is responsible for several failings. It accepts it provided Mr C with misleading valuations for his pension policy over a period of years. This has led to a loss of expectation.

Putting things right

When I'm considering a complaint like Mr C's I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of Aviva's acts and omissions were greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

Aviva failed to get to grips with Mr C's complaint, initially providing him with misleading or partial answers. And even in its last response it could've provided better information to give him some assurance.

In recognition of the trouble and upset its failings have caused Mr C, I require Aviva Life & Pensions UK Limited to pay him £300 compensation.

My final decision

For the reasons I've already set out, I'm upholding Mr C's complaint, but not to the extent he'd like. I now require Aviva Life & Pensions UK Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 October 2023.
Kevin Williamson
Ombudsman