

The complaint

Mr C complains that Aviva Life & Pensions UK Limited (Aviva) hasn't taken full account of the consequences of his personal pension having been mis-sold in the compensation it's paid him.

What happened

Mr C was a member of a defined benefit (DB) pension scheme through a former employer that he stopped working for in 1988.

He received advice from an agent of another firm that Aviva later became responsible for which recommended that he transfer his DB pension to a personal pension. The agent apparently told Mr C that his pension could be worth considerably more by transferring than if he left it where it was. Mr C accepted the advice and transferred his pension in February 1990.

In February 1999, Aviva invited Mr C to take part in an industry wide review of certain pension sales (otherwise known as the 'pensions review'). Mr C returned the invitation to Aviva and said he wanted the sale of his pension to be reviewed.

Aviva carried out a review. It determined that transferring his pension probably wasn't in Mr C's best interests. And it thought he'd likely suffered financially as a result of the advice he received. Aviva communicated the outcome of its review on 18 April 2001 and offered Mr C compensation of £16,792.64. This amount included a top up to reflect that Mr C's pension had likely also suffered a shortfall in death benefits (it also proposed an alternate method of redress that involved giving Mr C a separate payment, so that he could take out a life assurance policy. Mr C didn't choose that particular option). Aviva proposed to pay the compensation into the pension by increasing the number of units in it by the equivalent value. It told Mr C its offer was valid until 18 May 2001. Attached to Aviva's letter was an explanation of the offer along with an 'offer of redress statement', which included an explanation of what Mr C's DB pension would have paid him each year and how much his personal pension fund was worth. Aviva explained some of the assumptions used in its loss calculation (as prescribed by the regulator) and how it had arrived at the compensation figure in Mr C's case.

Mr C signed the acceptance form on 2 May 2001. Aviva received it shortly after and paid Mr C the compensation offered.

Mr C started taking his pension in 2012.

He later complained to Aviva about the mis-selling of the personal pension policy. Aviva responded in September 2023 and said that Mr C's concerns about the mis-selling related to the same issues that had been considered as part of the pensions review. So, it was satisfied that matter had already been considered. And as it had already offered compensation in full and final settlement, it said there was no requirement for it to consider the matter further. As such, Aviva told Mr C that it hadn't reassessed the suitability of the sales advice again. It didn't uphold Mr C's complaint.

Mr C wrote to Aviva again later in September 2023 and cited reasons why, despite the ‘full and final’ settlement he’d received, Aviva should investigate his mis-selling complaint again. Specifically, he felt that the settlement could only apply to the findings at the time and not the eventual outcome of his pension (which he thought was continuing to reduce in value). He also raised other questions with Aviva.

Aviva responded and explained that the pensions review was a one-off invitation meaning that the suitability of the sale of the policy wouldn’t be revisited in future. It explained that it had followed the regulator’s guidance by increasing the value of Mr C’s personal pension accordingly. And as Mr C had lost out on guaranteed spousal benefits too when transferring his DB pension, that was why it asked his wife to agree to the compensation offer it made.

Mr C complained to the Financial Ombudsman Service. One of our Investigators looked into the complaint and concluded, amongst other things, that the financial regulator only required businesses like Aviva to carry out a pensions review once. So, Aviva wasn’t required to update its calculations to account for current market conditions and changes in investment performance. The Investigator explained, amongst other things, that he hadn’t seen evidence of errors in the data that Aviva had used in the calculation. Therefore, he said he wasn’t intending to ask it to take further action.

Mr C didn’t agree with the Investigator’s assessment. He made a number of comments about why he didn’t think Aviva had paid him sufficient compensation. He also said it was unacceptable that he should have to suffer such a drop in his pension compared to the amount he would have got from his DB pension. He added that the problem likely stemmed from the mis-selling of the pension in the first place. Mr C asked for an Ombudsman to review the matter afresh. It’s been passed to me to decide.

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.

As Mr C is already aware, in October 1994, the regulator at the time, instigated an industry wide review of particular pension business carried out between 29 April 1988 and 30 June 1994. Authorised firms contacted consumers as part of that review and asked if they wanted the sale of their pension to be reviewed. The purpose of the pensions review was specifically to address the fact that some consumers may have suffered a financial loss as a result of the original advice they’d received - including advice to transfer out of a DB pension as Mr C had.

Mr C accepted Aviva’s invitation to take part in the review and Aviva reviewed the sale of the personal pension policy in line with the regulator’s guidelines. It then offered compensation on the basis the transfer advice Mr C received wasn’t thought to have been in his best interests.

Mr C’s evidently reflected over the years. And it’s clear that he remains concerned about the mis-selling of his pension. But the crux of his complaint now seems to be that regardless of having accepted the settlement offer made by Aviva, he had no understanding of the “*workings out*” that it used when calculating the compensation due to him. As such, he doesn’t know if the calculation was carried out fairly. Mr C clearly believes he’s not receiving the pension income he’d hoped for and that something has gone awry somewhere. He’s made other comments to Aviva such as the true scope of the settlement could only be determined by reference to the context within it’s made. What Mr C seems to mean by that is that other factors causing a continued shortfall in his pension ought to be taken into account. Therefore, he doesn’t think the ‘full and final settlement’ he agreed with Aviva can be upheld

in different circumstances.

I entirely appreciate Mr C's position here. But regardless of how he might feel now, I do need to make clear that it's not for me to carry out my own loss calculation simply because he believes the compensation offered over twenty years ago might not have been enough. I say that for a few different reasons.

First, the pensions review was intended to be a one-off exercise that would bring about a resolution for the consumer and respondent business. It wasn't envisaged that the issue would be revisited many years later. Second, pensions review calculations are complex and are carried out by professionals with expertise in these matters. We don't have the same level of expertise as the actuaries the businesses use and it's not our role to 'check' a calculation thoroughly in the way Mr C might hope or expect. Third, pensions review calculations were subject to supervision and sampling at the time by the then regulator. And it seems likely therefore that errors or non-compliance would have been picked up at the time.

I've noted that Aviva attached some explanations to its compensation offer letter. Those included the details used in its loss calculation and it explained how it arrived at the settlement figure in Mr C's particular case. And, given the context I've set out above, I can appreciate why Mr C might say he struggled to understand some of the workings out that Aviva sent him. But again, that's not a basis upon which I can complete another pensions review calculation now. And whilst Mr C's evidently concerned about the continued shortfall in his pension, he hasn't pointed to any particular entries or information used in Aviva's calculation that he thinks might be wrong. Again, therefore, given the one-off nature of the pensions review, that's another reason for saying that it can't be revisited now.

It's also worth reiterating a point that our Investigator made here. Firms such as Aviva were required to base their calculations on a set of assumptions drawn up by the regulator. The fact that some of those assumptions haven't borne out over time, for instance, differences in future investment returns and annuity rates, doesn't mean that firms like Aviva are required to revisit calculations done many years ago. Neither can Aviva be held responsible for the fact that some of the assumptions used haven't materialised.

From all of the evidence I've seen, I'm satisfied that Aviva has already addressed the fact that Mr C's pension may have been mis-sold to him. And there's no persuasive evidence to suggest that it carried out its subsequent pensions review incorrectly or acted contrary to the regulator's expectations.

Therefore, whilst I'm sorry to disappoint Mr C further, I won't be directing Aviva to do anything else.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 February 2024.

Amanda Scott
Ombudsman