

## **The complaint**

Ms B complains, that Aviva Life & Pensions UK Limited ('Aviva') advised her to opt out of a defined benefit occupational pension scheme ('DBOPS') and open a personal pension plan ('PPP') instead. She feels she received unsuitable advice and is financially worse off as a result.

## **What happened**

Ms B is represented in her complaint by her legal representatives but for clarity I will refer to Ms B throughout this decision.

In 1991, Ms B met with an adviser from Aviva to discuss her pension provision. Ms B says she was advised to opt out of a DBOPS and open a PPP with Aviva. At the time, Ms B was 32 years old and had been employed in the entertainment industry for some time. In July 2013, Ms B took the benefits available from the PPP she opened with Aviva. At the time of taking her benefits, they had a value of just over £12,000.

It is not clear what prompted Ms B to discuss her pension provision with her representatives but in September 2022, they complained to Aviva on her behalf about the advice she received in 1991.

Aviva accepted the complaint and began their investigation. But due to the time that has passed it had to contact various third parties to ascertain information about Ms B's company scheme. It was not able to provide a response within 8 weeks and so Ms B's legal representative referred the matter to this service.

On 14 April 2023, Aviva issued its final response. It said following an extensive investigation it had established that Ms B was employed between January 1979 and March 1991. The advice she received from the adviser was given on 4 April 1991. This would mean she was not an active member of the occupational pension scheme at that time the advice was given and so couldn't have been advised to "opt-out". Aviva acknowledged that this was somewhat at odds with the information in the fact find and so sought further clarification from her previous employer. It confirmed Ms B has indeed left their employment and the company pension scheme on 31 March 1991 and so Aviva concluded at the time of the advice Ms B could not have been advised to opt out as she was no longer an active member.

An investigator looked into things for Ms B. He explained that he had taken account of Ms B's recollections and the evidence from Aviva and HMRC. He could see there were inconsistencies in the fact find and the evidence provided by Ms B, her previous employer and HMRC. On balance he found the evidence suggested that Ms B was not an active member of the DBOPS at the time and as such could not have been advised to opt out of a scheme, she was no longer a member of. He didn't find that Aviva had done anything wrong and so he didn't uphold the complaint.

Ms B via her representatives didn't agree. They said:

- The fact find indicates that Ms B explained the company she worked for was being

taken over and that she was advised not to opt into the new pension scheme as she would incur increased charges. The advisor then set up the new pension plan for her to join.

- Underneath the 'summary of recommendations and actions' it states, '*if any of these recommendations involve the cancellation, conversion or lapse of any existing investment contract please provide reasons*' the answer states 'only existing pension scheme'. It said had Ms B left the scheme the answer would have been n/or no.
- Further to this, on page 6 of the fact file under the question 'are you a member of a company pension scheme?' it states 'yes'.

The legal representatives on behalf of Ms B asked for an ombudsman review.

### **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.

Having done so I have independently reached the same outcome as the investigator and I'm not upholding Ms B's complaint. I'll explain why.

I have summarised this complaint in less detail than Ms B has done and, I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the key issue here – whether Aviva advised Ms B to opt out of her DOPS and if so, was the advice it gave unsuitable.

It's probably important to say at the outset this service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead, this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been in if the problem hadn't occurred.

Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

Ms B's legal representatives have pointed to a number of concerns from the fact find that was completed around the time of the advice. It suggests that Ms B wanted a PPP and wanted to leave the company scheme as the company was being taken over. It also suggests an existing pension was being either cancelled, converted, or would lapse around the same time the PPP was taken out. Finally, an answer of yes was given to the question whether Ms B was a member of a company pension scheme. So, on the surface this looks like Ms B could have been advised to opt out of a DBOPS.

Aviva carried out an extensive and difficult investigation, not least because it involved identifying a number of third parties to establish Ms B's employment details and membership of the particular DBOPS in question.

It provided evidence to this service to show Ms B was employed from 19 January 1979 to 31 March 1991 by the employer in question and joined the occupational pension scheme on 1 April 1982. She ceased being a member when she left employment on 31 March 1991. This information independently verified by HMRC who confirmed Ms B was contracted out of SERPS between 9 April 1982 and 31 March 1991. Ms B also confirmed she stopped working for this employer in 1991.

I appreciate Ms B says her recollections of the advice she was given are different. It's been 32 years since the meeting took place between Ms B and the adviser. So, whilst I don't doubt what Ms B is saying, memories can and do fade, so I have looked to the evidence available to reach my decision on a balance of probabilities.

On the information available I'm persuaded the dates provided by HMRC and her previous employer are more likely than not to be accurate. On that basis Ms B left her employment on 31 March 1991 and importantly ceased to be an active member of the DBOPS.

On the fact find, it says an existing pension was being either cancelled, converted, or would lapse around the same time the PPP was taken out. But based on the contemporary evidence, I don't think this means Ms B was being advised to take out the PPP and opt out of a DBOPS. I'm of the view it's more likely than not that this question was answered yes because she was now no longer an active member of her employer's scheme, and so at that point she would be a deferred member of the scheme. So, I'm in agreement that answering yes to this question wasn't incorrect based on the other evidence I have.

I also accept that Ms B may well have said she was a member of a company scheme at the time of the advice, but that doesn't mean she was being advised to opt out of a DBOPS. As I've said Ms B would have been a deferred member of the scheme at the time of advice but only just as she met the adviser within a week of leaving her employment, so answering yes, in my opinion, wasn't unreasonable at that point.

I'm persuaded on balance that the evidence from HMRC and Ms B's employer is more persuasive than Ms B's recollections from 32 years ago. I haven't seen any evidence that persuades me the advice was to opt out of a DBOPS in favour of a PPP.

I think the evidence suggests it's more likely than not Ms B met the adviser just after she left the company scheme, her previous employer may or may not have been subject to a company takeover, but as Ms B had left its employment that in itself doesn't suggest she would have been an active member of any scheme. I think it's more likely that Ms B left her employment and then discussed with Aviva, a pension she could open so she could save towards her retirement. On that basis a PPP would have been suitable advice as she was not a member of a pension scheme.

I can see that both Ms B and her legal representatives have been asked several times to submit any further evidence they have that Ms B was advised to opt out of an active scheme, but I haven't seen anything beyond the challenges to the evidence available. On balance I'm not persuaded there is sufficient evidence to suggest Aviva did advise Ms B to opt out of a DBOPS, on the basis she had already left her employment and as such was a deferred member rather than an active member of the scheme and I don't uphold this complaint.

### **My final decision**

For the reasons I have given I don't uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or

reject my decision before 28 August 2023.

Wendy Steele  
**Ombudsman**