DRN-3676032

Financial Ombudsman Service

The complaint

Mr and Mrs M have complained that they were given unsuitable advice by a predecessor scheme of Aviva Life & Pensions UK Limited, to invest in a with-profits bond in 1998.

Mr and Mrs M are being represented by a claims management company (CMC) with this complaint.

What happened

Mr and Mrs M took out the bond following advice in August 1998. They invested a lump sum of £70,000. They elected to take a monthly income from the bond of £400. This was increased to £437.50 in 2003 (7.5%). The bond was surrendered in 2006 for £49,607.03.

In October 2021 Mr and Mrs M complained to Aviva through their CMC. They said amongst other complaint points, that their future needs and objectives weren't adequately considered and that an inappropriate amount of their free assets were taken up.

Aviva looked into it but didn't uphold the complaint. They said that bonus rates hadn't been guaranteed and that they were satisfied the advisor had acted with reasonable care and skill.

Mr and Mrs M remained unhappy and brought their complaint to this service for an independent review. Aviva initially said the complaint hadn't been brought in time, but accepted our investigator's conclusion that it had. However, he then looked into it but didn't think Aviva had done anything wrong. He said that nothing he had seen showed the investment to have been unsuitable for Mr and Mrs M at the time. He felt their attitude to risk, plans for the future and financial circumstances were all considered.

The CMC responded to say they still felt the advice had been inappropriate and that Mr and Mrs M's circumstances had not been considered sufficiently. In particular, that Mrs M was approaching retirement. They also stated that the elected income at inception was above the 5% tax free amount, causing a potential liability.

As Mr and Mrs M remained unhappy, the case has been passed to me to reach a decision on.

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 reached the same conclusion as the investigator. I'll explain why.

When considering a complaint, I am deciding if the business clearly did something wrong or made a mistake, not whether they might have done things differently considering hindsight (such as a different recommendation). In this case, I am satisfied that the advice given at the time was suitable.

I've looked at what I know about Mr and Mrs M's overall financial situation when they took out this investment. In addition to what the parties have told me, I think it's reasonable for me to rely on information in the 'fact find' document, illustration, Key Features document and suitability letter.

At the time of the advice, Mr M was 56 years old and Mrs M was 58 years old. They both worked for the family run business. Taking into account their joint income and monthly outgoings, they had approximately £330 disposable each month. They had an outstanding mortgage of £90,000 and no dependants. Prior to this advice, they had recently taken out a tax-exempt special savings account (TESSA) and personal equity plan (PEP now called ISA), for over £10,000 each. They had some emergency funds in the bank and also over £90,000 in a managed unit trust. It was from this that this investment was to be made from.

This means Mr and Mrs M had some experience of managed portfolios. They also both described themselves as having a balanced attitude to risk, ticking 5 on a scale of 1-10. This was described as *"you prefer a balanced approach to investment and are willing to accept average risk to achieve more attractive returns".* Considering this and that the original investment amount of £70,000 was protected as long as it remained invested for a minimum of 5 years, I think the bond matched their attitude to risk.

I have thought carefully about Mr and Mrs M's circumstances and objectives from the time. Especially that they wanted a monthly income and some capital growth. I think this recommended bond was appropriate. Mr and Mrs M clearly wanted to increase the income they were earning, compared to their current managed unit trust investment and this bond offered that. I appreciate that the CMC has said that it was an inappropriate amount of their funds used. However, I don't agree. The investment came from a pre-existing investment. Mr and Mrs M were left with approximately £20,000 in that. As well as this they had a further £20,000 invested and approximately £15,000 as cash savings. I think this was sufficient with no planned future expenditure commitments stated. I note the comments that Mrs M planned to retire before the initial 5 years of this bond, but I haven't seen anything to conclude that she was going to need this money and so a market value adjustment (MVA) might have then applied.

The CMC has also raised the concern that the income elected for this bond was originally over 5% and after 5 years was changed to approximately 7.5% of the original investment amount, therefore becoming potentially taxable. However, they haven't provided anything to show that this was the case or Mr and Mrs M were higher rate taxpayers and that an extra tax liability was incurred. Further, the income levels seem to be in line with what could have been taken without incurring any MVA or *"discontinuance deduction"* as outlined in the Key Features Document. Mr and Mrs M also elected for the increase in 2003, rather than being advised. Which suggests that they wanted that level of income.

On balance, based on what I've seen and been told, I am satisfied the recommendation was suitable for Mr and Mrs M. It matched their risk profile, circumstances and needs at the time.

My final decision

For the reasons set out above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M and Mr M to accept or reject my decision before 25 August 2023.

Yoni Smith
Ombudsman