

The complaint

Mr M has complained that Aviva Life & Pensions UK Limited misled him about its advice process and that it was negligent in failing to act within its promised timescales.

This resulted in a decrease in the cash equivalent transfer value (CETV) of Mr M's defined pension benefits, for which Mr M has asked Aviva to compensate him.

What happened

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Mr M initially spoke to one of Aviva's representatives about transferring defined benefits accrued through three pension schemes (two with Barclays and a Local Government Pension Scheme (LGPS)) on 10 May 2022.

Mr M confirmed to Aviva that he'd obtained CETVs for all three pensions (the LGPS was obtained in April 2022 and expired on 21 July 2022, Barclays *****60 expired on 22 July 2022 and Barclays *****59 on 25 June 2022).

Aviva then sent Mr M the brochure entitled "Considerations for defined benefit advice".

On 27 May 2022, a fact-find was partially completed remotely with the remainder of the fact-find completed remotely on 31 May 2022. At this point Mr M confirmed that he wished to proceed to "abridged advice".

Aviva sent documentation to Mr M on 31 May 2023 and it chased the completion and return of this on 6 June 2022. Mr M then returned the documents the same day.

Aviva then e-mailed Mr M on 8 June 2022 for information about his cash savings.

Aviva then sent the abridged advice report to Mr M on 13 June 2022 and it was presented remotely on 14 June 2022. It was agreed at that point that Aviva would provide Mr M with full advice.

Letters of authority for Aviva to seek information relating to Mr M's defined benefit pension schemes was sent to him to sign via "DocuSign" and he returned these on 21 June 2022. Mr M also returned the full advice agreement.

On 29 June 2022, Barclays informed Mr M that it needed an original letter of authority to release information and not an e-mailed one. Mr M returned the signed forms on 30 June 2022.

Aviva chased Barclays for the information it said it needed about Mr M's defined benefits (although I've noted that Mr M views this differently – see below) and the information from Barclays was received on 14 July 2022.

The LGPS responded to the information request on 18 July 2022. On 20 July 2022 Aviva requested that, as the existing CETV would expire the next day, a new CETV be issued by the LGPS.

During further discussions with Aviva, it made Mr M aware that an up to date CETV for the LGPS wasn't available – it would only provide one CETV in twelve months. Aviva said it couldn't ringfence the LGPS defined benefits and only provide advice on the two Barclays pensions.

Therefore it recommended that Mr M defer receiving advice on transferring for 12 months.

Mr M complained to Aviva on 25 August 2022. He said in summary that, if Aviva had advised at the outset that it had no intention of working with the existing CETVs, he would have sought advice elsewhere.

Aviva issued its response to Mr M's complaint on 17 November 2022. It concluded that he'd been provided with accurate information about the defined benefit transfer process. Further it said that if Mr M had been provided with full advice, there was no guarantee that it would have recommended transferring his defined benefits.

Mr M replied to say that he'd told the Aviva adviser when he first spoke to him that he'd recently obtained three valid CETVs and asked whether the adviser could work with these. Mr M added that he was reassured by the adviser that he would work swiftly, and that no other adviser would be able to do so more quickly.

Mr M further said that Aviva moved swiftly to offer abridged advice but after weeks he had to chase it for progress. He was advised that the cash flow modelling hadn't been started and that the Aviva adviser was waiting for the CETVs to elapse so he could ask for new ones.

Mr M said that, if he'd known this was the plan from outset, he would have worked with a different adviser. Mr M confirmed that he'd since worked with a new adviser and had transferred the defined benefits with Barclays, whilst retaining those held with the LGPS.

Dissatisfied with Aviva's response to his complaint, Mr M referred the complaint to this service in July 2023.

Having considered the matter, our investigator didn't think the complaint should be upheld, saying the following in summary:

- Mr M had approached Aviva and another business regarding the potential transfer of his defined benefits, and he'd chosen Aviva due to its familiarity with the scheme transfer rules, its experience and its commitment to provide the best outcome for him.
- In an email from the Aviva adviser on 20 July 2022, he said that it was highly likely that new CETVs would be needed to ensure that there was adequate advice to complete the advice process. There wasn't a copy of the call between Mr M and the adviser on 10 May 2023, when timescales were discussed, but the investigator had considered what both parties had said.
- Having done so, she considered it unlikely that the adviser would have told Mr M that he would ensure the transfers completed within two and a half months, before the

expiry of the CETVs, when the brochure sent to Mr M about the process said that this could take anywhere from six to nine months to complete.

- The investigator thought it was likely that the adviser had told Mr M that he'd work quickly to try to capitalise on the existing CETVs, but she wasn't persuaded that a guarantee had been given that, if the advice was to transfer, this would be completed before the CETVs expired.
- As to whether there were delays in the actual process, there hadn't been any up to the point of the information gathering being complete on 31 May 2022. It then took nine working days to review the information obtained at the end of May and send the abridged advice report on 13 June 2022. This was then presented to Mr M the next day. The investigator didn't think that this timeframe was unreasonable.
- The main points from the abridged advice exercise were that Mr M had limited investment experience, which supported retention of the defined benefits, and that his capacity for investment risk and loss was unclear as it would necessitate obtaining retirement illustrations from the respective schemes along with subsequent cash flow modelling. As such, full advice was recommended.
- The brochure sent to Mr M explained the advice process and the research and analysis phase which is completed after abridged advice has identified the requirement for full advice. It further said that scheme information would be needed to formulate its recommendations to Mr M.
- Given the findings of the abridged advice, the need for further scheme information and up to date illustrations detailing the scheme benefits, the investigator thought that it wasn't unreasonable for Aviva to proceed to full advice.
- Once the letters of authority were received from Mr M on 21 June 2022, Aviva contacted the schemes for the information it needed to provide the full transfer advice analysis (APTA). Barclays requested the original letters of authority on 29 June 2022, but whilst it was Mr M's assertion that Aviva should have known Barclays' requirements in that regard, it wouldn't be reasonable to expect Aviva to know each scheme's requirements. So it hadn't done anything wrong here.
- But this didn't in any case impact Aviva's progress as the LGPS didn't respond to the information request until after Barclays' response on 14 July 2022.
- Aviva had confirmed that, in order to complete the APTA, the CETVs were required. But by the time the required information was received from all three schemes, it wasn't possible to complete the APTA before the expiry of the LGPS CETV.
- The investigator acknowledged Mr M's point that there was time to consider the transfer of the defined benefits with Barclays, and that although it required the signed member and receiving scheme transfer agreement by the expiry of the CETV, it allowed an extra month for the confirmation of appropriate financial advice form to be completed and returned to it. But Aviva had said that it wouldn't advise on the transfer of the Barclays defined benefits in isolation, and so ring fence the LGPS defined benefits, when providing advice. It all needed to be considered together, and as the LGPS administrators would only issue one CETV in a 12 month period, it wasn't possible to move forward with full advice.

- The investigator didn't think it was unreasonable for Aviva to consider all three pension schemes when advising Mr M on his retirement benefits. And even if it had been able to advise on all of the scheme benefits, the recommendation may not have been to transfer in any case.

Mr M disagreed, however, saying the following in summary:

- Aviva had all the information it required from Barclays to perform the transfer assessment. Barclays had confirmed at the outset that it didn't provide any additional information.
- The LGPS administrators had confirmed to him that they would continue to work with the original CETV and that their algorithm wouldn't adversely affect the transfer value – so it had recommended that Aviva proceed on that basis.
- Aviva had told him that it would work quickly but may need to request new CETVs in the event that the work wasn't completed in time. It had over three months in which to complete the required work (ten weeks left of the CETV guarantee period, plus the additional four weeks granted by Barclays). It had only taken a few weeks to go through the whole process with Mr M's subsequent adviser.
- Aviva had provided the documentation relating to the transfer process, but it had dissuaded Mr M from using another adviser on the basis that it could match the pace and exceed the quality of outcome. That Aviva may not ultimately have recommended the transfer was no excuse for not bothering to perform the assessment in good time.
- If the adviser had no intention of doing anything until the CETVs had expired, then this should have been made clear at the outset – but instead the adviser told him that he was working hard to get it completed. The adviser was fully aware of what was at stake, but when the time ran out, the adviser admitted that he'd done nothing. This cost him over £220,000 in lower CETV values.
- The remote conversations were quite different to the email of 20 July 2022, in which Mr M was told that it was highly likely new CETVs would be required to complete the advice. The Aviva adviser had originally told him that he'd work at the same pace as the alternative adviser, but he had no intention of doing so.
- The adviser may not have guaranteed that the process would be complete in two and a half months, but he was aware of the timescales being offered by the alternative adviser (six weeks at most), along with the values at risk if the CETVs expired – and said that he would be able to complete the process at least as quickly.
- The abridged advice process was a simple rule based exercise with very little judgement required, if at all. And so the outcome of this should have been available almost instantly (it took less than a day to move to full advice with his subsequent adviser) rather than the nine days it took Aviva. Further, the points resulting from the abridged advice were of limited relevance, given his occupation dealing in financial services and that he'd already performed all of the cash flow modelling himself and shared it with the Aviva adviser.
- Full advice would always have been required to proceed with the transfers – but it was the delays caused by Aviva here which were the issue.

- Aviva's adviser should have known that the letters of authority would require "wet" signatures rather than copy documentation. That he didn't demonstrated the level of inexperience in dealing with such transfers. But the adviser should in any case have been aware from the initial information provided by Barclays that there was a further four week period after the CETV expiry in which Aviva could conclude the advice process.
- The LGPS administrators had been very helpful and were prepared to work with Aviva after the expiry of that CETV. This was set out in emails which were shared with Aviva, and so the adviser was aware of this.
- Mr M had in any case told the Aviva adviser that he wished to ring fence the LGPS pension and not transfer it as this, combined with his state pension, would give him a secure pension at age 68. But the adviser refused to consider this balanced approach as an option.
- Mr M queried as to why, if the LGPS couldn't be ring fenced by Aviva, it was possible for his alternative adviser to give advice. They were able to still work with the LGPS and the expired CETV, and had all the information they needed from the schemes to be able to give full advice.
- Aviva also had all the necessary information, but failed to give advice in a timely fashion and misled him as to the progress, which prevented him from seeking the services of the alternative adviser.
- Mr M also shared further details about his personal circumstances, which had begun to make the continuation of work difficult, and had meant that capitalising on the original CETVs was so important – and Aviva had been aware of this.

The investigator put Mr M's further comments to Aviva for its response. The investigator then summarised this response to Mr M as follows, confirming that, on the basis of the information received from both parties, her view on the matter was unchanged:

- The available evidence didn't support the position that Barclays had allowed a further month beyond the expiry of the CETV in which to complete the advisory process. The letter accompanying the CETV had referred to differences in how the transfer request would be dealt with if the relevant forms were received within a month, or after a month, of the expiry date of the CETV, but in both instances the CETV would be recalculated.
- As the abridged advice report hadn't been signed until 6 June 2022, it wouldn't have been reasonable to expect the full advice process to complete before the expiry of one of the Barclays CETVs on 25 June 2022.
- Although the LGPS administrators may have been willing to work with Mr M's adviser on the basis of the existing CETV, Aviva couldn't provide advice without knowing the actual revised CETV.
- Aviva had reiterated that there was in any case no guarantee that it would have advised Mr M to transfer his defined benefits even if the advice process had completed before the expiry of the CETVs. Any "loss" was a result of the actual transfer after receiving a recommendation from an alternative adviser.

Mr M then submitted additional comments as follows:

- Aviva had persuaded him to use its services on the basis that it was familiar with the schemes and could provide advice in the most efficient and effective way. There was no attempt to investigate further with Barclays an extension to the guarantee period. It also wasn't aware that a wet signature would be required to request additional information.
- It was reasonable to expect Aviva to deliver advice within the timescale provided by Barclays (by utilising the four week extension).
- The LGPS had been willing to work with Aviva, as had been demonstrated by emails from it.
- His declining health had meant that he'd needed to proceed with the transfer of the Barclays defined benefits at great loss.

As agreement couldn't be reached on the matter, it's been referred to me for 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.

And having done so, I've reached broadly the same conclusions as the investigator, and for similar reasons. I know this will disappoint Mr M, but I nevertheless hope that my findings below will reassure him that, in my view, I don't think Aviva has done anything wrong here.

I'll firstly address Mr M's thoughts on the ways in which he considers Aviva could or should have acted differently – so amendments to the way it handled things here - before then considering the matter of any delays in the process it did in fact undertake.

And at the outset, I'd say that the alternative adviser may have been able to provide advice on a different basis, and more quickly, but this doesn't necessarily mean that the process undertaken by Aviva, or that its requirements in terms of needing up to date CETVs, was unreasonable. I have no knowledge of that alternative adviser's process, or the overall quality of that process and the ultimate advice provided to Mr M. My role is to determine whether Aviva took reasonable steps, and a reasonable amount time in taking those steps – not to compare it against the actions of another adviser.

So firstly, Mr M has said that Aviva could have utilised the four week extension provided by Barclays beyond the expiry of the CETV guaranteed period. But this would have meant a new CETV being quoted. This wasn't an extension to the existing CETV, and so it would essentially have been the same position as needing to request a new CETV, which as we know, was in any case likely to be lower.

As it was, Aviva wasn't prepared to provide advice without considering the up to date CETV which would be produced by the LGPS. And I don't think that's unreasonable if all of the defined benefits were potentially to be transferred (see below on the proposal of ring fencing and retaining the LGPS defined benefits) – this information would reasonably be required to assess the overall value of the defined benefits and what a transferred sum might produce in comparison to the scheme benefits.

And whilst the LGPS administrators might have been prepared to work with Aviva on the basis of the effectively expired CETV, I don't think it was unreasonable for Aviva to not wish to proceed to full advice on this basis. In order to provide a complete and accurate picture, it

was reasonable for Aviva to require an up to date CETV.

Mr M has said that he told the Aviva adviser that he was prepared to ring fence and retain the LGPS defined benefits, which ought to have provided scope for consideration of the Barclays defined benefits in isolation. But the first time that this is documented as being proposed by Mr M was in the email of 10 August 2022, several weeks after the expiry of the CETVs, as follows:

“...it occurs to me that if there was potentially a scheme to leave alone, it could be [the LGPS scheme] so perhaps we could only proceed with the two Barclays schemes...”

So this proposal wouldn't have made a difference to the ability for Mr M to have capitalised on the two original Barclays CETVs.

I've then considered whether Aviva in any case unnecessarily delayed the process, which meant that it wasn't possible to complete the advice process within the guaranteed period for the CETVs (not the additional four week period for completing the advice process for the Barclays CETVs – as I've said above, the information from Barclays indicated that this would in any case have required a recalculation of the CETVs).

Mr M has said that Aviva should have known that schemes require a wet signature on documentation – and that this lack of knowledge delayed matters. But this wasn't the case for the LGPS – it was prepared to accept the copy documentation, and so I don't think it was unreasonable for Aviva to send copy documentation to both sets of scheme administrators in the first instance.

But as with the investigator, even if a different interpretation of that were possible and it could be reasonably concluded that Aviva should have verified the signature requirement first, the information from the LGPS wasn't received until after the information from Barclays – on 18 July 2022 - and so in the absence by that point of a proposal to ring fence the LGPS benefits, no “holistic” consideration of the whole transfer proposal could occur.

Mr M has also said that Aviva should have realised that it had everything it needed from the initial information pack issued by Barclays and that the further request delayed matters. But this wasn't the case. Defined benefits transfers are unique to the individual concerned, and can involve, for example, different proposed retirement ages to those assumed by the scheme information, as was the case here. I don't think the additional information request, relating as it did to Mr M potentially retiring at age 56, along with verification on other points, was unreasonable here.

It's Mr M's further assertion that his alternative adviser was able to complete the abridged advice process in less than a day, and that Aviva ought to have been able to meet the same timescale. But as I've said above, I can't comment on the actions of the other adviser. I can only comment on Aviva's process. And taking into account the actual time taken to produce that abridged advice, and the factors to be considered, I don't think it was excessive. After initial fact finding, the service agreement for abridged advice was signed on 6 June 2022, and after additional information gathering, including an information request to Mr M about his cash savings, the report was produced on 13 June 2022. The recommendation was to proceed to full advice, which Mr M accepted.

I've also noted what Mr M has said about the Aviva adviser saying that they would match the timescale promised by the alternative adviser. But if the alternative adviser had, according to Mr M, said that it would take six weeks at the most, and the Aviva adviser had said this would be at least matched, then the suggestion is that the latter had guaranteed it would complete in just a month and a half.

However, Mr M has also said that the Aviva adviser didn't guarantee that the process would be complete in the two and half months left for two of the CETV guarantee periods. In his response to Aviva's answer to his complaint, Mr M said that that the Aviva adviser had said that he would "try his hardest" to work with the existing CETVs – not that there was a guarantee.

There's an obvious tension there, especially given the timescales set out in the initial documentation of between six and nine months.

I therefore think, as with the investigator, that it's likely that the adviser said that he would try to complete the process before the CETVs expired, and that he would also try to match the timescales offered by the alternative adviser – but that there could be no guarantee of this.

As I've said above, I don't think the overall time it took Aviva to complete the abridged advice process was unreasonable. Nor, for the reasons set out above, do I think the additional information requests were unreasonable. But given the additional information which Aviva considered was required of the schemes for the full advice process, there could then have been little reasonable prospect of even the first CETV deadline of 25 June 2022 being met.

The fact that all of the required additional scheme information wasn't in fact received until 18 July 2022, by which time the first CETV deadline had already expired, then meant that there was a period of three days and four days for the LGPS and the Barclays scheme respectively in which to process the information, produce the APTA, incorporate this into a suitability report, issue the suitability report, obtain Mr M's confirmation that he wished to proceed and then send the completed forms to the scheme administrators. I don't think this would reasonably or realistically have been possible.

Overall, therefore, whilst as I've said above I acknowledge that Mr M will be disappointed by this outcome, I don't think that on a fair and reasonable assessment of the facts I could conclude that Aviva is responsible for the reduction in the CETVs he ultimately received.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 12 June 2024.

Philip Miller
Ombudsman