

The complaint

Mr D has complained that the advice process followed by Aviva Life & Pensions UK Limited (Aviva) was unfair and misleading.

Additionally, Mr D has complained that his subsequent complaint about this process was not dealt with appropriately.

What happened

In August 2021 Mr D began exploring the possibility of transferring his defined benefit (DB) pension schemes to access the funds flexibly throughout his retirement.

Having decided to use Aviva's advisory service, Aviva conducted a triage call with Mr D on 26 October 2021. During this call Aviva tested Mr D's understanding of their advice process. It was confirmed that Mr D had received and reviewed the initial brochure which detailed Aviva's advice offering.

Issues covered within this call included the fact that the advisers' initial starting position when giving advice on DB pension benefits was that it would be unsuitable for Mr D to transfer, that the likely recommendation for the majority of customers would be to remain in their existing DB schemes, that there was no insistent customer process available and as such if the Aviva adviser recommended retaining the existing DB schemes no further help could be provided, and that if the advice was to remain in the existing schemes fees would still be payable.

Fees themselves were also discussed, with Mr D confirming he was aware of the costs of both the abridged and full advice propositions.

The day before his fact-finding call with Aviva - 17 November 2021 - Mr D provided his adviser with a spreadsheet which included detailed retirement forecasts including pension provision in place, expenditure needs, future house sales / purchases and a planned cash injection from an equity release facility Mr D was planning to utilise in the future.

The fact-finding call took place the following day.

The abridged advice outcome meeting subsequently took place on 1 December 2021. The outcome was "unclear". The adviser could not state for certain that transferring was unsuitable for Mr D. At this point Mr D had two options, walk away or progress to a full advice process. This full advice process would mean additional fees were payable to Aviva with no guarantees that the advice would support a transfer of the DB benefits.

Mr D chose to progress to the full advice process.

A call took place between the adviser and Mr D on 12 April 2022 to discuss the transfer.

Mr D has provided a recording of this call. The call went through the cash flow modelling that would be undertaken with details of Mr D's pension provision and what income Mr D required throughout his retirement. In addition, investment risk and the types of investment

which could be made should the funds be transferred were also discussed. This call also included a discussion around timescales for the remainder of the advice process, this was key given the transfer quotes provided by the existing DB schemes were due to expire in late May / early June 2022. The adviser stated that he was confident the timescales were achievable and suggested that the advice call could take place in early May 2022.

The recommendation call took place on 13 May 2022.

Before discussing the actual recommendation, the adviser began the call by summarising the process that had been followed and discussed the outcome of the cash flow modelling that had been completed. The overall outcome of this cash flow modelling was that in all scenarios Mr D's pension provision was shown to be insufficient to meet his stated needs. Whether the pensions were transferred or not, Mr D's income needs could not be met.

If transferred, funds were shown to run out prematurely, if the pensions remained in situ, the fixed income provided was shown to be too low to meet Mr D's needs.

As neither option could meet Mr D's stated requirements the advice given was to remain in the existing DB schemes.

Given Mr D was clearly unhappy with this advice the remainder of the appointment (to discuss additional advice regarding Mr D's other defined contribution pension schemes) was suspended and the adviser registered a complaint on Mr D's behalf.

The adviser forwarded Mr D all the advice documentation and subsequently there was another call on 17 May 2022 to go through this documentation in detail.

During this call Mr D asked detailed questions and raised issues with the process that had been followed in reaching the advice outcome. These included issues with his planned equity release not being included in the cash flow modelling, taxation assumptions on withdrawals from the pension, how inflation was modelled and how the assumed growth rates on the pension funds (had they been transferred) had been calculated and modelled.

The complaint that had been registered by the adviser on Mr D's behalf was acknowledged later in May 2022 with a call to discuss the issues held between the complaint handler and Mr D on 1 June 2022. Mr D recorded this call.

The complaint handler explained the complaint process and stated that her role would be to investigate the process followed by the adviser to ensure that it was correct. It was explained that the complaint handler would not look into the actual suitability of the advice given with it being additionally explained that *"we very rarely overturn complaint cases like these"*.

In response to the detailed questions about the numbers included within the cash flow modelling (regarding inflation, taxation and growth rates) the complaint handler explained that answers to these issues had been provided by a technical team and offered to forward these answers to Mr D directly.

The technical team response sought to clarify some of the numbers used within the cash flow modelling. This explained that whilst the spreadsheet provided by Mr D had been used to inform the fact finding and advice process, the equity release was not included within the cash flow modelling as it was potentially 17 years in the future and there was the potential for legislation and lending criteria changes in the interim. In addition, it was noted that the equity release would be "cost neutral" in that it would apply to both transfer / not transfer calculations and as such would not promote one option over another.

The technical team response then went on to analyse the growth rate / interest rate queries made by Mr D before finally moving on to the taxation issue. Mr D had noted that there were gross and net income figures for income withdrawals in the early years of the cash flow modelling and questioned why this was the case given the first 25% of the overall fund could be taken cash free. The response noted that each withdrawal had been modelled as 25% tax free / 75% taxable.

Mr D was unhappy with the responses provided noting that, the adviser did not make him aware equity release would not be used as part of the modelling, the numbers provided by the technical team in response to his queries around growth rates and interest rates still did not add up and that the assumption around the taxation of the income withdrawals should not be made.

The complaint final response letter was issued by Aviva on 6 July 2022. This stated that Aviva were not upholding the complaint and considered that the adviser had followed the correct process with all the relevant documentation and warnings being provided. With regard to the issue around future equity release not being included, the response noted that this was forecast to be done in 2037 and as such was too far in the future to be included in their cash flow modelling.

Additionally, the response stated Aviva were happy with their advice methodology and stood by the analysis and cash flow modelling undertaken.

Mr D was unhappy with the response to his complaint. He explained that he had not been provided with detailed answers to his questions and asked to transfer his DB schemes as an insistent client. As such the complaint was re-opened.

A second response to the complaint was issued on 18 October 2022. Aviva's original outcome was not changed.

This letter noted that the call recordings which Mr D had provided had been listened to. Aviva confirmed that they had not found any issues with the actions of their adviser. They stated that the abridged advice process had been followed correctly with an "unclear" outcome being reached. The call recording of the 12 April 2022 did not show any assurances or guarantees being given as to the outcome of the overall advice, with confirmation that the final advice report may recommend transferring all, some, or none of the DB schemes.

In considering the advice call of 13 May 2022 Aviva did not believe there were any issues. Any hesitation on the adviser's part was explained as being due to the adviser knowing that the advice outcome was going to disappoint Mr D.

Whilst Mr D had complained that Aviva have failed to offer any subsequent help or support, this second complaint outcome letter noted that the written advice reports provided to Mr D did "strongly recommend" his plans be revisited either by returning to work or amending his retirement requirements.

The issue around the planned equity release was covered with the letter repeating Aviva's stance that this was not included in the cash flow modelling as no reasonable assumptions could be made about a possible equity release so far in the future.

In response to the detailed questions Mr D had raised about the cash flow modelling and Mr D's subsequent rejection of the detailed answers provided this letter did not seek to provide any further detail, rather it simply stated that Aviva were not prepared to alter their advice methodology and stood by the outcome of the cash flow modelling undertaken.

In January 2023, unhappy with Aviva's responses, Mr D registered his complaint with this service.

The complaint had been broken down into specific areas by Mr D to include:

- Mr D felt he had been lied to and mis-led by Aviva throughout the process.
- Mr D felt Aviva had provided conflicting information and made false promises.
- Mr D felt the advice process used by Aviva was flawed.
- Mr D felt unsupported after having received the advice to remain in his existing schemes.
- Mr D was unhappy with how Aviva has investigated his complaint.

Our investigator looked into things and combined the individual complaint points above into two main areas.

Firstly, had Aviva been clear and transparent throughout the advice process, and secondly, should Aviva have done more in view of Mr D's complaint.

Having considered each of the two points above, our investigator concluded that Aviva had acted appropriately.

Our investigator could find no issues with the advice process.

Having considered the content of the documentation issued to Mr D both before and during the advice process and listened to the call recordings made by Mr D, our investigator concluded Aviva had been clear and transparent in informing Mr D of the fees and costs of their service and the potential outcomes.

Whilst some of the comments made by the adviser could be considered positive, our investigator noted these were primarily in relation to timescales and did not believe these amounted to the adviser confirming that the transfer would proceed.

Our investigator concluded that the advice process was clear with no evidence Mr D had been misled.

With regard to Aviva's actions in dealing with Mr B's complaint, our investigator did not consider Aviva's actions unreasonable.

Our investigator noted that whilst Aviva could have done more to answer Mr D's specific questions earlier, responses had been provided later in the process.

Recordings of Mr D's calls with the complaint handler were also considered, with our investigator not finding anything which would indicate that the complaint outcome had been pre-determined

Whilst Mr D had additionally complained that there had been no further service or offers of help with his retirement planning after the advice to remain was given, our investigator concluded that this was not unreasonable given a complaint was still active and as part of this Mr D had asked for a refund of advice fees.

Following the issuance of the investigator's findings Aviva confirmed they had nothing further to add. Mr D did not agree with the findings but did not provide any further commentary or

evidence.

As no agreement has been reached, the case has been passed to me.

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 considered the chain of events above I have followed the same approach as our investigator and grouped Mr D's individual complaint points into the same two broader questions – was the advice process transparent and was Aviva's handling of Mr D's complaint reasonable.

Having looked at the advice process I have concluded the process followed by Aviva was fair.

The initial documentation issued to Mr D details clearly the two-stage advice process which Aviva follow. The costs of both the abridged and full advice service are fully documented, and the fact that Aviva will not transact any business on an insistent client basis is also confirmed.

As well as providing this information in writing, Mr D's understanding of this information was confirmed verbally in the triage call which took place before the advice process began. The transcript of this call confirms that Mr D was aware of all the above, as well as the fact that the starting point for the advice would be that it was in Mr D's best interests to retain his DB pensions, and that for most people retaining DB pensions was the right outcome.

I consider it clear that Mr D was aware of the advice process, the charges that would be levied and the potential outcomes before he agreed to proceed.

Following this the abridged advice process was completed. The documentation here clearly explains that whilst the adviser agrees Mr D has an attitude to risk which would support the advice to transfer, his capacity to take such risk is unclear and that as such the overall outcome of the abridged service was "unclear". A cash flow modelling exercise as part of the full advice process would be required before any final recommendation could be made.

The costs of the full advice process were fully detailed in the abridged advice report, and I can see no misleading information within this abridged advice documentation.

Moving on to the full advice process I have listened carefully to the recorded calls provided to this service by Mr D and having done so have reached the same conclusion as our investigator.

Within the call on 12 April 2022, I can find no deception on the adviser's part.

The call contained discussions about what future investments could be made with the DB funds after the transfer was completed. Whilst I appreciate that Mr D took this as an indication that the transfer was going to proceed, this was never stated by the adviser.

It was necessary as part of this call for the adviser to discuss possible future investments, as part of any advice regarding the transfer would also have to include a recommendation for a suitable pension product and investment strategy for the funds if the DB pensions were transferred. I accept that the eventual advice to remain in the DB schemes subsequently made this part of the call redundant however the adviser was not to know this at that time.

I have also carefully considered the point in the call where next steps and future timescales were discussed. Again, I appreciate that the tone of this conversation was positive, and that Mr D took comments made by the adviser to mean the transfer was going to proceed. However, at no point did the adviser state that the advice was going to support the transfer.

As per the investigator's findings, when considered in isolation statements such as *"all looking good and should go through"* and *"we'll complete this comfortably within the transfer dates that we've been given"* could be considered to give a positive impression on the advice outcome, but they were made at point within the call when timescales were being discussed - specifically in relation to being able to finalise the recommendation and conduct the further advice meeting before transfer value deadlines were reached. Overall, content of the call is clear that the advice outcome was not guaranteed.

Following this call the actual advice was discussed in a further call on 13 May 2022.

Mr D's complaint has noted that this call was overly long, with the adviser taking a significant amount of time to confirm that the advice was to remain in the existing DB schemes. Again, Mr D has provided a recording of this call and as such I have been able to consider its exact content carefully.

Mr D's point that it took the adviser a long time to confirm the advice outcome is valid, with a significant amount of time being spent on discussing the cash flow modelling that had been undertaken.

Whilst I can appreciate that once the advice outcome had been received, the time spent discussing the cash flow modelling must have seemed wasted, I do not consider it unreasonable for the adviser to attempt to explain why a specific outcome had been reached before giving what he knew was going to be a disappointing outcome.

A number of different scenarios had been modelled and each of these were discussed. Regardless of whether the DB pensions were retained or transferred, the cash flow modelling showed that Mr D had insufficient provision to meet his stated needs. Given this, it was concluded that transferring the DB pensions could not be shown to be in Mr D's best interests, and the advice was therefore to retain the DB schemes.

I have noted that Mr D has also stated within his complaint that this time taken discussing the cash flow modelling led him to believe the adviser did not believe or agree with the advice being given however I do not believe there is any evidence to support this.

From the content of the earlier calls, it is clear to me - and would have been clear to the adviser - that Mr D wanted to transfer his DB pension schemes and as such the advice to retain those benefits was going to disappoint Mr D. In such circumstances I consider it reasonable for the adviser to take his time in trying to explain why such a decision had been reached.

Following confirmation that the advice was to retain the existing DB pensions, Mr D's clearly unhappy reaction led to a complaint being registered on his behalf and the remainder of the call being abandoned. The adviser did however confirm that the full advice paperwork would be forwarded to Mr D for his consideration.

This paperwork was discussed in detail on the follow up call held on 17 May 2022 where Mr D raised several technical questions in relation to the advice received. These related to the way inflation had been modelled, the growth rates used within the cash flow modelling, the taxation applied to the income withdrawals and the omission of the equity release he had planned in 2037.

The adviser explained that whilst the planned equity release hadn't been included in the cash flow modelling, it should be considered that any equity release would apply to both retain and transfer scenarios and as such would not improve one scenario over another.

For the remainder of the questions raised by Mr D the adviser explained he would pass these on to the technical team responsible for producing the numbers questioned.

From this point the adviser had no further contact with Mr D, with the answers to Mr D's questions being provided by the Aviva complaint handler. As such I have gone on to consider the second of the broader questions above and assess Aviva's handling of the complaint and whether they should have done more.

I have listened to the call between the complaint handler and Mr D on 1 June 2022. Having done so I have reached the same conclusion as our investigator. The call handler was clear that it was the process the adviser had followed, rather than the actual advice outcome, which would be the subject of the investigation. Whilst the complaint handler does state that *"we very rarely overturn complaint cases like these"* I do not consider this to be confirmation that the outcome of the complaint itself was predetermined. Rather I believe it was the complaint handler trying to manage Mr D's expectations.

During this call it was also confirmed that the detailed answers which had been put together by the technical team (following the call between Mr D and his adviser on 18 May 2022) would be forwarded on.

Following receipt of these Mr D remained unhappy. The explanations provided regarding the omission of the planned equity release, the growth rates shown within the cash flow modelling and the taxation of the income payments from the pensions should they be transferred were all considered insufficient by Mr D.

The full complaint response was issued by Aviva on 6 July 2022.

This response explained that Aviva had investigated and concluded the adviser had conducted the advice process correctly with no evidence of any wrongdoing. The detail of the technical team's answers to Mr D's questions was not repeated however the response clearly noted that Aviva stood by the content of the cash flow modelling which had been undertaken and were not willing to change their advice processes.

Whilst Mr D did not accept the response provided, the chain of event above shows Aviva did acknowledge and investigate the complaint, providing a response in a reasonable timeframe. The fact Mr D did not accept the findings issued does not mean Aviva's approach was inappropriate, a complaint response had been issued with this clearly noting Mr D retained the right to refer the complaint to this service if he remained unhappy.

I note that the complaint was subsequently re-opened with a second complaint response being provided by Aviva on 18 October 2022. This again was not accepted by Mr D, who repeated that more detailed answers to his questions were required.

Overall, whilst Mr D was (and remains) unhappy with the responses provided by Aviva, Aviva themselves have attempted to answer the questions posed by Mr D. The responses to the complaints made have clearly documented Aviva's position, they do not believe their adviser was misleading throughout the advice process, stand by the decision not to include the proceeds of any possible future equity release that Mr D may take and stand by the detail and content of the cash flow modelling.

Again, whilst this second response may not have been accepted by Mr D, I do not believe

the approach taken by Aviva was unreasonable or unfair.

Overall, I have reached the same conclusion as our investigator.

Having assessed the advice process which was followed I do not believe Aviva did anything wrong. Full information and disclosure was provided to Mr D before and during the process itself, and whilst I fully appreciate the advice outcome recommending he retain his DB pension was not what he wanted, Mr D was made fully aware that this was a possibility.

With regard to the complaint subsequently made by Mr D, I can find no evidence that the complaint outcome was pre-determined and whilst Mr D may remain unhappy with the complaint responses provided by Aviva, this does not mean Aviva did anything wrong in investigating the complaint.

As such I am not upholding this complaint.

My final decision

As per the rationale above I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 September 2023.

John Rogowski
Ombudsman