The complaint

Mr D complains that Aviva Life & Pensions UK Limited ('Aviva') did not provide a suitable recommendation when it gave him abridged advice and then full advice on his defined-benefit ('DB') occupational pension scheme.

What happened

Mr D was entitled to take his DB pension scheme benefits in August 2021. So, a few months before this he contacted the scheme administrators to ask for details of his pension and the cash equivalent transfer value ('CETV') of it. Mr D was informed that he was entitled to a starting pension of £6,334.56 per year and the CETV was £179,193.

Mr D felt it was in his best interest to transfer the benefits to an existing pension with Aviva, so he contacted his independent financial adviser ('IFA') to initiate the transfer process. As Mr D's IFA wasn't prepared to advise him on his DB pension, he contacted Aviva.

In February 2022 Aviva provided Mr D with abridged advice; it concluded that it wasn't clear whether or not it would be in Mr D's best interest to transfer his pension. So, Mr D proceeded with the full advice service. Aviva ultimately concluded that Mr D should not transfer out of his DB scheme. And it said it would be unable to process the transfer for him. Its report of June 2022 set out the reasons for its recommendation.

Mr D complained to Aviva, as he didn't understand how it had reached this conclusion – he didn't think it was supported by the information it had gathered. Mr D also felt that Aviva should have been able to recommend against the transfer at the abridged advice stage, and he'd incurred unnecessary costs by having to proceed to full advice.

Aviva didn't uphold Mr D's complaint. It said it was reasonable to recommend that Mr D should remain in his DB scheme because it couldn't clearly demonstrate a transfer was in his best interests, which was what the regulator required. Aviva said it couldn't have recommended Mr D remain in the DB scheme at the abridged advice stage as it couldn't fully establish his capacity for loss without completing detailed financial analysis.

Mr D didn't accept this as he said his own calculations demonstrated he was in a strong financial position to transfer out of the DB scheme.

Aviva didn't change its decision so Mr D referred his complaint to our Service. Mr D maintained that Aviva had enough information to recommend that he remain in his DB scheme at the abridged advice stage. He felt Aviva ought to have told him at that stage that if he was in good health and he didn't have sufficient guaranteed income to cover his expenses, they wouldn't likely recommend a transfer. Nevertheless, Mr D still thought the overall advice to remain wasn't suitable as he had clearly demonstrated he had sufficient guaranteed income and other assets to be able to take the risk of transferring his DB pension. He said Aviva had shown through its analysis he would be over £50,000 better off if he transferred out of the DB scheme and questioned what amount above this would've been acceptable to support a transfer.

Our Investigator didn't recommend that the complaint should be upheld. She felt the adviser's conclusion at the abridged advice stage was reasonable. And that ultimately the advice to remain in the DB scheme was suitable overall given the CETV offered poor value for money and Mr D's goal of leaving an inheritance for his grandchildren could've been met by using his other considerable assets. She didn't think it was clearly in Mr D's best interests to transfer out of the DB scheme.

Mr D didn't accept this. He said Aviva hadn't used the correct state pension forecasts or inflation metrics and so the income modelling wasn't accurate. He feels accurate modelling of his income in retirement demonstrates that he would be significantly better off by transferring out of the DB scheme. Mr D also said that Aviva didn't record his tax position correctly – he says he intended to remain a non-taxpayer and Aviva incorrectly assumed he was a basic rate tax payer. He maintains that it was in his best interest to transfer so he could avoid paying income tax. Mr D also said that Aviva ought to have advised him to purchase added state pension years, and had it done so it could've included this in the income modelling.

The Investigator didn't think the inaccuracies were significant such that it would have made a difference to Aviva's advice. And she thought Aviva had discussed Mr D buying added state pension years but he didn't want to pursue this at the time. Mr D continued to disagree, so the complaint has been passed to me to make a final decision on the matter.

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.

Mr D has provided a large amount of information with this complaint and I won't be commenting on all of it. But I have reviewed everything and my comments below reflect what I consider to be the key issues and my thoughts on them. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach my decision.

I'm aware that Mr D has asked Aviva for information which he says he needed to support his complaint. He says Aviva hasn't responded and that this has disadvantaged him. But Aviva has given its response to Mr D's complaint and Mr D referred it to our Service for an independent review. So, I don't think it is unreasonable that Aviva does not wish to engage further with Mr D about his concerns, given that it is now with our service for determination. I'm also satisfied the Investigator made enquiries with Aviva and requested information from it where appropriate, before issuing her findings.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Aviva's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Aviva initially provided Mr D with abridged advice; so in accordance with COBS 19.1A, its advice could only result in two outcomes. Either it would recommend that Mr D remained in his DB scheme or tell him that it was unable to take a view on whether it was in his best interests to transfer without undertaking full pension transfer advice. And crucially, in providing abridged advice it was not permitted to carry out appropriate pension transfer analysis ('APTA'), which would include comparing the benefits payable from the DB scheme with an alternative arrangement and other income modelling.

When providing both abridged advice and full advice, Aviva had to have regard to the fact that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Aviva should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr D's best interests.

The abridged advice

Although Mr D feels strongly that all of the information and evidence Aviva gathered clearly shows that it was in his best interests to transfer, Mr D initially said that Aviva should have advised him to remain in his DB scheme at the abridged advice stage. That's because it was aware of his objectives, and understood his financial position, including his assets and other pensions that he intended to use for retirement. Mr D also says his own income modelling was available for Aviva to consider. He believes that Aviva unfairly required him to take the full advice service, at significant cost.

I've considered this carefully, but overall I don't think it was unreasonable for Aviva to conclude at the abridged advice stage that it was unable to take a view on whether it was in Mr D's best interests to transfer, without undertaking full pension transfer advice.

Aviva told Mr D in its abridged advice report that the aim of the abridged advice service was to identify customers for whom a transfer out of a DB scheme is clearly unsuitable – this saved those customers from incurring a significant advice fee. I don't think that is an unreasonable way to describe things. And based on the information Aviva gathered, Mr D did not present as a customer for whom a transfer out of a DB scheme was clearly unsuitable. I say this because Aviva determined Mr D had a moderate attitude to risk, as well as having fairly extensive investment experience and knowledge – he had an existing self-invested personal pension ('SIPP') and had funds invested in stocks and shares ISAs. While it understood Mr D didn't have sufficient guaranteed income in retirement to meet his needs, he had other pensions and assets that could supplement this. So, it was possible that Mr D had sufficient capacity for loss such that he could afford to take the risk of transferring his DB pension.

So, I think Aviva needed to undertake further detailed financial analysis to determine whether or not it was clearly in Mr D's best interests to transfer. Mr D says it could've reviewed his own cashflow modelling, which he said showed that even allowing for modest growth, investing his CETV put him in a better position financially. But in the FCA's Finalised Guidance ('FG') 21/3 'Advising on pension transfers', section 4.61 states:

"You can use the information on accrued rights in the Statement to assess how well the DB scheme meets your client's needs and objectives. So, for example, you can revalue the DB scheme pension to normal retirement age or apply early retirement factors to assess how well it meets the client's needs and objectives, alongside their other retirement provision, ie you can model the benefits from the DB scheme against the client's expenditure needs. You can also consider the generic risks of transferring and losing those benefits, as well as the generic risks and benefits of transferring into an arrangement with DC benefits. But you cannot assess how well a proposed arrangement would meet their objectives and needs because abridged advice does not consider how funds might be invested if a transfer proceeded. This includes where a client could use a DC scheme to fund an immediate annuity purchase, or an immediate vesting personal pension plan, if this forms part of the client's objectives. So you may get the transfer value and consider it in the round, where needed to give one of the two outcomes. But you should not make projections based on the transfer value, get annuity illustrations or carry out any comparisons of the ceding scheme benefits with a proposed receiving scheme. This type of modelling would be part of APTA so cannot be used when giving abridged advice."

Sections 4.63 and 4.64 also say:

"You must not prepare a transfer value comparator (TVC), consider a receiving scheme or undertake appropriate pension transfer analysis (APTA) when giving abridged advice. If you include any of these, you will not be giving abridged advice and must charge appropriately.

"We consider that if you use cashflow modelling based on the transfer value, you are likely to be undertaking APTA. This includes using the transfer value to project any form of future benefit, including using generic or assumed products and assumptions. This is because you would be able to compare the benefits and options available under the ceding scheme, which you can consider as part of abridged advice, with those available under the proposed scheme."

So, at the abridged advice stage, I don't think Aviva was permitted to carry out any analysis that involved projecting the future value of the CETV if invested, and that includes considering Mr D's own calculations. So, I'm satisfied that Aviva's conclusion at the abridged advice stage was reasonable, based on the evidence it had and the analysis it was permitted to carry out under the abridged advice regulations.

The full pension transfer advice

Mr D says he understands the FCA's starting position that a transfer out of a DB scheme won't usually be suitable, however, he says that Aviva is obligated under the law and regulations to facilitate a transfer. But that isn't the case, Aviva must start by assuming that a transfer won't be suitable and only recommend that a customer transfer out of a DB scheme if it can clearly demonstrate that it is in the customer's best interests to do so. And Aviva told Mr D, before he agreed to undergo the full advice process, that it would not facilitate the transfer for him if it ultimately concluded that he should remain in his DB scheme. That is a policy decision it is free to make. However, that did not prevent Mr D from acting on his wish to transfer out of the scheme if he truly believed it was best for him.

I know Mr D's preference was to transfer the CETV to Aviva, because he already had an existing SIPP with it. But Mr D had fulfilled the FCA's requirement to take advice, and so he was free to approach another provider to facilitate the transfer of his funds. Transferring his DB scheme was not dependent on him having received a positive recommendation to transfer from Aviva or any other financial adviser. So, while I appreciate Mr D's frustration with Aviva's recommendation, he can still explore other options that would allow him to transfer his pension.

Turning to the advice itself, I appreciate Mr D feels very strongly that Aviva's recommendation to remain in his DB scheme was demonstrably the wrong decision, but overall I don't think the recommendation was unreasonable. I'll explain why.

Financial viability and death benefits

Mr D has made many comments about the financial viability assessment carried out by Aviva, including that it didn't contain correct state pension figures or take into account the recent higher inflation we've experienced. But I don't intend to address each of these points in detail because ultimately I don't believe those inaccuracies were significant, such that they would've had an effect on Aviva's overall recommendation. And in terms of the inflation measures used by Aviva, the regulator sets out the assumptions that should be used. Even though inflation has been higher than this recently, it is subject to fluctuation. And I don't think Mr D could reasonably expect Aviva to depart from the regulator's assumptions, given they are projected over a much longer period of time.

Mr D has also commented on the transfer value comparator ('TVC') Aviva carried out. The TVC is a measure of what sum of money the consumer would need now to invest at a risk free return to provide equivalent benefits to the DB scheme at retirement. As Mr D was already at his normal retirement age, the TVC effectively gave him a clear understanding of the value for money the CETV offered by his scheme provided, because it showed him how much he needed to buy the equivalent guaranteed benefits on the open market straight away.

The TVC was based on an updated CETV of £167,816 and demonstrated that it would cost Mr D £251,824.48 to purchase the equivalent benefits via an annuity, an extra £84,008.48. I know that Mr D says he wasn't interested in purchasing an annuity at the time, but I think it clearly demonstrated the value of the benefits he would be giving up by transferring out of the DB scheme. While I note Aviva concluded that Mr D was willing to give up the guarantees and accept the risk of transferring, that doesn't mean that it was clearly in his best interests to do so, given he wasn't going to be able to replicate the benefits he'd be giving up.

Mr D asks what margin between the CETV and the cost of replacing his benefits would've been acceptable to Aviva, but I don't think I there is a specific number that would've been acceptable. Ultimately the advice to remain in the DB scheme was based on a number of factors, which I will go on to discuss.

Mr D also says that transferring gave him the flexibility to take an annuity at a later date, if he decided that he wanted to have more guaranteed income. He says Aviva didn't consider this and that he's obtained a quote for an annuity recently, replicating the benefits of the DB scheme for less than the CETV, which demonstrates his point. But it's evident that there have been significant events that have affected annuity rates since Aviva gave Mr D advice. And so it could not have known that the cost of replacing Mr D's DB scheme benefits would fall in the near or even distant future – its advice could only have been based on the information known at the time.

Mr D has also said that it isn't reasonable to describe the DB scheme benefits as guaranteed because they would only increase by 3% each year. As inflation has been higher than this over the last two years, and isn't likely to fall significantly in the near future, he says his benefits decrease in real terms. I understand Mr D's point here, but it isn't unreasonable to describe the DB scheme benefits as guaranteed because they do in fact provide him with a guaranteed annual income that escalates by 3% each year – this doesn't depend on any investment performance. In contrast, the income he can derive from his CETV if invested is not guaranteed, it is wholly dependent on investment returns and is also impacted by inflation.

As part of the financial viability assessment, Aviva carried out cash flow modelling, which assumed a medium growth rate. It determined that whether Mr D remained in his DB scheme or not, he could meet his income and capital needs beyond age 99, even with stress testing. Aviva also said that at age 85 (the average life expectancy), his total fund would be around £51,000 higher if he transferred out of the scheme. Again, Mr D feels that this means a transfer ought to have been recommended. And if not, again questions what margin would've been appropriate.

Aviva ultimately concluded that by remaining in the scheme, Mr D was able to achieve his goals with less risk. And while the cash flow modelling demonstrated that Mr D would've likely had a higher fund value overall at age 85, that wasn't the case if, for example, he lived to age 92. That's because more of the income he needed in retirement was made up of guaranteed, escalating income, so that left higher amounts in his savings and SIPP to continue to grow. I appreciate that Mr D had concerns about his life expectancy given his family history, but Mr D led an active lifestyle and was in good health. So, as Aviva pointed out, there was a significant chance of him exceeding his life expectancy. And if he lived a longer life, he could've had more funds to pass on in the event of his death if he remained in the DB scheme.

Furthermore, while Mr D could have a fund worth more than £51,000 if he transferred out compared with the situation if he remained in it, his wife would also be eligible for a guaranteed escalating spouse's pension on Mr D's death for as long as she lived. This was in addition to the fund Mr D would leave behind. So, it isn't necessarily the case that Mr D's wife would be better off financially if Mr D passed away at age 85, particularly if she lived beyond this age.

In addition to the above, when Aviva undertook stress testing on the modelling, this showed Mr D would have a higher fund value at age 85 and 90 if he remained in the DB scheme. And it also has to be borne in mind that the modelling Aviva carried out was based on consistent returns at the medium growth rate, which can't be guaranteed. So, if investment returns were lower than expected, or if Mr D decided to take less risk with his funds as he grew older (as most people do), that could've had an impact on the overall fund value such that remaining in the scheme could've produced a better overall outcome for him.

I recognise that Mr D believes that figures used to produce the income modelling could've been more accurate. And he still feels that this would've made a difference overall and tip the recommendation in favour of transferring. But I don't think the state pension figures were so inaccurate that it would've made a difference to the recommendation, particularly in the circumstances that allowed for stress testing. And I think Aviva used reasonable inflation assumptions.

It's clear that Mr D was very interested in leaving behind a large inheritance to his family. Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The immediate lump sum death benefits on offer by transferring was likely attractive to Mr D. But whilst I appreciate death benefits are important to consumers, and Mr D might have thought it was a good idea to transfer his DB scheme to his SIPP because of this, the priority here was to advise Mr D about what was best for his retirement provisions.

Mr D already had the ability to pass on whatever remained of his savings and SIPP funds on his death to any beneficiary of his choosing. And by taking the guaranteed income from his DB scheme, this left more of those funds to grow and pass on. I'm also mindful he could've made arrangements to put his savings in a trust to mitigate any potential inheritance tax issues.

So, in light of this and the fact that the cash flow modelling demonstrated Mr D could achieve his objective of leaving a large inheritance, as well as meeting his own income needs, by remaining in the scheme, I think the conclusion Aviva reached that Mr D should remain in the DB scheme was reasonable. It's clear to me that remaining in the DB scheme enabled Mr D to meet his objectives without risking his pension provisions. And the income from the DB scheme, together with Mr D's state pension entitlement, more or less covered his income needs. So, overall, I don't think the financial analysis Aviva carried out clearly demonstrated was in Mr D's best interest to transfer. And for this reason, I think the advice it gave him overall was suitable.

Tax issues

Mr D says that Aviva didn't give enough consideration to his tax position, as it was required to do under COBS 19 Annex 4A. He says that remaining in the DB scheme would see him pay around £29,000 in tax up to age 85. Whereas he says he would've been able to ensure that he paid no tax if he transferred because he could keep his pension withdrawals within the personal allowance and take the remainder from his savings.

But I'm satisfied that Aviva took Mr D's tax position into account when making the recommendation. Mr D was clear that while his minimum income requirements were low, he expected to take ad-hoc sums from his pension for holidays, special purchases and other expenditure. Furthermore, Aviva noted in the abridged advice report:

"You prefer the ability to take more tax-free cash as you feel you are likely to be a taxpayer for life. You like the idea of having this either for capital needs or to deliver a more tax efficient income that can be tailored to your other income streams."

So, I think Aviva made it clear that it was basing its advice on Mr D being a taxpayer in retirement – and Mr D had a chance to challenge this if that wasn't correct. Nevertheless, even if Mr D had said he wanted to try as far as possible to be a non-taxpayer throughout his retirement, I don't think that would've caused Aviva to reach a different outcome. I don't think this additional want would've meant Aviva would conclude it was clearly in Mr D's best interests to transfer, given he was already able to meet his main objectives by remaining in the scheme.

Other concerns

Mr D also says that Aviva failed to act in his and Mrs D's best interests by not advising them to buy back missing state pension years. However, Mr D already had an IFA that helped him with his financial affairs and Aviva made it clear that the scope of its advice was limited to whether or not he should transfer out of his DB scheme. So, I don't think Aviva had agreed to provide Mr D or Mrs D with general pensions advice. But regardless, the evidence supports that Mr D's state pension entitlement was discussed with him in the fact-finding stage. The notes show Mr D was told that it was a cost effective way to achieve additional guaranteed income, but Mr D wasn't keen on sacrificing additional capital for income.

Mr D says that he wasn't in an informed position to make that statement as Aviva didn't have exact figures or carry out the appropriate calculations. But as I've said, Aviva's advice was limited to whether Mr D should transfer his DB scheme or not, so I wouldn't have expected it to provide those. And in any event, I think Mr D was told what was being proposed was cost-effective, so had he been interested in knowing more, I think he would've said so at the time.

Mr D says that Aviva did not give proper consideration to his expectation that he and Mrs D were keen to downsize their residential property. Mr D said this would've made additional capital available to them through the sale of it, and this wasn't taken into account.

I can see that Aviva was aware of this, and also noted that Mr and Mrs D thought they might want to build their own property before doing so. The notes said if they chose to build a property this could cost up to £450,000 and they thought they might need this money available before selling their home. So, I think that this was taken into account overall. And while Mr D feels that transferring would put him in a better position to do this, I think he already had sufficient funds at his disposal to meet this objective without risking his guaranteed pension. And transferring the pension in order to use the funds for this purpose could've actually placed Mr D's pension more at risk, because the build could've cost more than anticipated and/or Mr and Mrs D could've had trouble selling their home, and so they might not have been able to recoup the funds they might spend on the project.

Summary

I appreciate that Mr D and Aviva had very different views of what was in his best interests. But I think it's important to stress that Aviva's role here wasn't simply to transact what Mr D wanted it to do. It's role was to advise Mr D, and in doing so it had to look beyond what Mr D wanted and make a determination of what it believed was in his best interests. And from what I've seen, it's clear that Aviva believed Mr D's chosen path, which was to give up a guaranteed income in retirement, clearly wasn't in his best interests as it placed all of his pension funds at risk when he had no need to do so. Considering that Mr D was able to achieve all of his objectives by remaining in his DB scheme and the starting assumption the FCA said Aviva needed to make, I don't think that conclusion was unreasonable.

My final decision

For the reasons I've set out above, I'm 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 28 September 2023.

Hannah Wise
Ombudsman