

The complaint

Mr and Mrs B complain through their representative, a claims management company (CMC), that Aviva Life and Pensions UK Limited gave them unsuitable investment advice.

What happened

The background to this complaint is well known to both parties so I won't go over it in great detail, but the key facts are as follows:

- In March 2002 Mr and Mrs B were advised to invest around £40,000 into an AXA Sun Life Flexible Bond
- At the time of the sale Mr and Mrs B were aged 57 and 52 and have said they were first time investors
- Mr B had recently been made redundant and Mrs B was a part-time teaching assistant
- They've said they had between £45,000 and £50,000 in cash assets, of which £30,000 came from Mr B's redundancy payment and £15,000.00 from an inheritance
- They've said that their main objective at the time was to receive an income from their money, so they opted to receive £166 per month from the bond
- They surrendered the bond in 2003 for around £31,000 as they wanted to clear their mortgage and install a conservatory
- The CMC complained on their behalf to Aviva in 2019 but Aviva thought the complaint had been made too late
- The CMC then brought the complaint to this service where it was considered by one of our investigators
- The investigator thought the complaint had been made in time. Aviva accepted his findings, so he then considered the merits of the complaint. He thought the complaint should be upheld and explained that after considering Mr and Mrs B's circumstances at the time, he thought they'd been advised to take too much risk and invest too much of their available capital
- Aviva didn't accept his findings, they thought that aside from Mr and Mrs B's recollections from the time – some 18 years ago – there was no evidence of the discussions that Mr and Mrs B would have had with their adviser. So, they were unable to assess key drivers of the advice that was given - such as previous investment experience, what Mr and Mrs B said to the adviser about their circumstances at the time, how much risk they were prepared to take and other factors. In the absence of any evidence, they didn't think the investigator's opinion was correct

- The investigator wasn't minded to change his opinion so the complaint has been passed to me to make a decision

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 think this complaint should be upheld and I will go on to explain why. But firstly, I'd like to say that I take the points that Aviva have made about the lack of documentary evidence from the time. I appreciate that the sale was some 19 years ago, and I'm fully aware that memories do fade over time. However, Mr and Mrs B's testimony is evidence which needs to be carefully considered and assessed. And in this case, on balance, it has been backed up by other evidence that has been made available to me.

Mr and Mrs B have provided further evidence of their circumstances at the time. They've submitted documents showing that Mr B was made redundant in late 2001 and he received a lump sum retirement grant of around £42,000 and an annual pension of around £11,000. They also evidenced that they had an outstanding mortgage of c.£21,000 which they repaid in February 2002 – before they received the advice to invest in the bond.

So, from the evidence we now have, we can see that Mr and Mrs B had around £42,000 from Mr B's redundancy payment and they've also said that they received £15,000 from an inheritance. So, I think it's fair to say they had at least £60,000 in available capital before clearing their mortgage in February 2002 as they paid off their mortgage of £20,000 and then invested £40,000 in the flexible bond.

I think it's important to note that they chose to take the maximum amount of tax-free income they could from the bond. I think this shows that they had a real need for income at the time. They also chose to surrender the bond after only a year which I think shows that they were advised to invest too much of their available capital.

Having considered their circumstances, I'm not persuaded that they should have been advised to invest £40,000 in the flexible bond – despite having cleared their mortgage. I agree with the investigator that an investment of £20,000 would have been appropriate for Mr and Mrs B's circumstances at the time. This would have left them with at least £20,000 available capital for emergencies and unforeseen expenditure at a time when they were still getting used to the changes in their lifestyle brought about by Mr B's redundancy.

I also agree with the investigator's opinion that the recommended fund was too risky for Mr and Mrs B. I haven't been able to see the make up of the fund from the time, but recent documentation shows that it is a medium risk fund. I don't think it's reasonable to assume that the fund had the same composition in 2002 as it does now, but I think it's likely that it had broadly the same aims and risk profile.

Taking into account Mr and Mrs B's circumstances, I don't think a medium level of risk was suitable. I say this as they would have had a limited capacity to replenish any large losses. I also don't think that Mr and Mrs B as inexperienced investors would have understood the implications of taking a medium level of risk. I think they were prepared to take some risk, but a medium level of risk was simply too high for them at the time.

In summary, having considered all the available evidence, I think the recommendation was unsuitable. I agree with the investigator's opinion that Mr and Mrs B should only have been advised to invest £20,000 and at a lower level of risk.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs B as close to the position they would probably now be in if they had not been given unsuitable advice.

I take the view that Mr and Mrs B would have invested differently. It is not possible to say *precisely* what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs B's circumstances and objectives when they invested.

Calculation 1

What must Aviva do?

To compensate Mr and Mrs B fairly, Aviva must:

- Compare the performance of Mr and Mrs B's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Aviva should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
AXA Sun Life Flexible Bond - based on a £20,000 investment	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Aviva should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month.

Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the Aviva should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Aviva totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs B wanted Income with some growth with a small risk to their capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr and Mrs B's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs B into that position. It does not mean that Mr and Mrs B would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs B could have obtained from investments suited to their objective and risk attitude.

Calculation 2

To compensate Mr and Mrs B fairly, Aviva must:

- Compare the performance of Mr and Mrs B's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Aviva should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
AXA Sun Life Flexible Bond - based on a £20,000 investment	No longer in force	Average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Aviva should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the Aviva should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Aviva totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs B wanted to achieve a reasonable return without risking any of their capital.
- The average rate for the fixed rate bonds would be a fair measure given Mr and Mrs B's circumstances and objectives. It does not mean that Mr and Mrs B would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

My final decision

I uphold the complaint. My decision is that Aviva Life & Pensions UK Limited should pay the amount calculated as set out above in calculation one and two. Aviva Life & Pensions UK Limited should provide details of its calculations to Mr and Mrs B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 28 January 2022.

Marc Purnell
Ombudsman