

The complaint

Mr and Mrs B complain that they were given unsuitable investment advice by Aviva Life & Pensions UK Limited, referred to as “the business”.

They’re being represented by a Claims Management Company (CMC).

What happened

In my provisional decision of 29 December 2021, a copy of which is quoted below and forms part of this final decision, I said I wasn’t minded to uphold the complaint. In summary, I said:

“...subject to any further submissions, provisionally I’m not minded to uphold this complaint.

On the face of the evidence, and on balance, despite what the CMC says, I’m unable to safely say that the recommendation was unsuitable. In other words, I don’t have the evidence to safely conclude that the recommendation was unsuitable for Mr and Mrs B.

The CMC has provided submissions to support the complaint, which I’ve read and considered carefully. However, I hope Mr and Mrs B won’t take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy. The purpose of my decision isn’t to address every single point raised, it’s not what I’m required to do in order to reach a decision in this case.

My role is to consider the evidence presented by the CMC and the business, and reach what I think is an independent, fair and reasonable decision based on the facts of the case, rather than take any sides. In deciding what’s fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it’s for me to decide, based on the information I’ve been given, what’s more likely than not to have happened.

Given the passage of time, I’m not surprised that the business is unable to provide more information about the point of sale. Financial businesses aren’t required to retain information indefinitely so I can’t blame the business for not being able to provide more information about the sale of a product that took place over 20 years ago.

On the face of the evidence, and on balance, I don’t really know what Mr and Mrs B’s wider financial circumstances were at the point of sale in 2000 and their aims and objectives, so despite what the CMC says, I’m unable to safely conclude that they weren’t willing to take a risk with their money. I’m mindful that the CMC’s proposed redress methodology (unlike the investigator’s redress methodology) suggests that Mr and Mrs B weren’t willing to take any risk at all – but I don’t think that’s correct.

I note Mr and Mrs B were married, had three dependent children, and a small outstanding mortgage. Based on what the CMC says Mrs B was working and Mr B was off work at the time for health reasons, but still in receipt of benefits. In any case, the latter doesn’t automatically mean that they shouldn’t have been advised to invest.

I note that Mr and Mrs B had access to a reasonable amount of funds – in the sum of £28,000 – even before they received another £8,000 in inheritance money, making a total of £36,000. This doesn't suggest that they didn't have access to a reasonable amount funds at the time, or wouldn't continue to have, even after investing £10,000.

I also note that whilst they weren't experienced investors, they/Mrs B wasn't a first-time investor either, having previously invested in something similar. So, in the circumstances I can't safely say that they ought not to have been advised to invest in a product they were broadly familiar with.

On the face of the evidence, and on balance, I can't safely say that Mr and Mrs B weren't prepared to take a risk with their money, or that they were in any way risk averse as the CMC's proposed redress methodology would suggest, or that they weren't in a reasonable position to invest. I note even after the investment they had access to a reasonable amount of money.

I note the CMC says that there's no evidence of a meaningful or in-depth assessment by the adviser of Mr and Mrs B's attitude to risk. But given the passage of time, I'm not surprised that there isn't more information available on this point. Just because there isn't more information, 20 years after the sale of the investment, doesn't automatically mean that there wasn't a reasonable assessment at the time.

On balance, I think it's more likely than not that relevant questions were asked in order conclude that they had a 'moderately secure' attitude to risk, as suggested by the CMC, but the business hasn't been able to provide any more guidance on this point.

Once again, given the passage of time, I'm not surprised that there isn't more information available about this or where 'moderately secure' falls on a scale of no risk to high risk, if that was indeed the range as suggested by the CMC.

I note the CMC says:

"...according to the current fund fact sheets of the Global Distribution Fund and Deferred Distribution Fund, the funds are both heavily invested into UK and overseas equities and property, contributing to 54.5% - 55% of the whole asset mix and making the funds at least medium risk. The asset class breakdown of the funds may had been different in the year 2000, however you have not provided any evidence of this despite our requests."

Despite what the CMC says, I can't safely say that the recommendation was "heavily" invested in equities based on a recent fund fact sheet, or that it involved more risk than Mr and Mrs B were willing to take.

I'm mindful that they kept the investment a year over the minimum required fixed term, which would suggest – albeit with the benefit of hindsight – that they didn't need the money, and weren't unhappy with the advice they received. I also note that Mr and Mrs B made a gain on their investment, which I assume was in line with their expectation or they would've complained at the time.

Whilst I appreciate Mr B's circumstances, I note there was nothing to suggest that he couldn't return to work following treatment. In any case, this doesn't automatically mean that he and Mrs B shouldn't have been advised to invest, if that's what they wanted to do. It might be that they felt it was all the more reason to invest the inheritance lumpsum for the future, rather than leave it in a savings account.

There was also nothing to suggest that Mrs B would be out of work just because she was temping/doing contract work, I'm mindful that she was working through an agency which was helping her to find work and there was nothing to suggest that work was running out.

Or, that Mrs B couldn't obtain a permanent position if that's what she wanted. But I'm aware that for many people it's a lifestyle choice and temp work suits them in the longer term especially if they have children. In the circumstances, I can't say Mrs B couldn't afford to invest just because she was temping or shouldn't have been advised to do so because of it.

In any case, I don't know what information the adviser had to hand or was given before the recommendation was made. I've not seen a fact find or suitability letter to confirm why exactly Mr and Mrs B were made this recommendation. But this doesn't mean I can safely conclude the advice was unsuitable.

I appreciate Mr and Mrs B will be disappointed I've reached a different conclusion to the investigator. Furthermore, I realise my decision isn't what they want to hear. But on the face of the (limited) available evidence, and on balance, I'm unable to uphold this complaint and give them what they want."

I gave the parties an opportunity to respond to my provisional decision and provide any further submissions they wanted me to consider before making my decision.

The business didn't respond to my provisional decision.

The CMC responded and in summary provided the following key points:

1. The investigator's view suggested that the redress should be calculated using "average rate from fixed rate bonds", which is the same as what the CMC suggested. My suggestion that it was different, isn't correct.
2. Whilst it can see the point that I was making about Mr B being out of work, and that being a reason why he and Mrs B might've wanted to invest, the latest evidence – in the form of a detailed account of their circumstances at the time – suggests they shouldn't have been advised to invest.
3. Mr B was out of work and suffering from mental health issues at the time, although that wasn't the extent of his mental health issues.
4. In the mid-80's Mr B had a serious accident which left him with long-term physical and mental health issues. He spent several months out of work and when he got back, he was unable to do the same job. In other words, he'd returned to work early and didn't have any support.
5. At the time of the advice, Mr B couldn't do what he previously did and there was no suggestion that this was likely to change.
6. Mr B had attempted to take on light roles as a 'hobby income', but he couldn't work fulltime or make a meaningful contribution to the household income.
7. When it was clear that Mr B couldn't work, Mrs B started temping. Whilst the mortgage and essential bills were covered by state/disability benefits, they needed Mrs B's income to cover minor luxuries such as Christmas or the occasional holidays.
8. By the time of the sale, Mrs B's temp role would become permanent.
9. Mr and Mrs B's savings at the time were built up slowly over many years. There was no quick or easy way to replace this money.
10. The savings may appear to be significant, but this money was for the future in the event of any unexpected expenditure.
11. Based on Mr and Mrs B's recollection, this money shouldn't have been treated as funds they were able to 'gamble' with. If lost, there was no reasonable prospect of recovering the money.
12. Mr and Mrs B are happy to discuss further their clear and honest recollection of their

circumstances at the time.

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, despite the points made by the CMC, my decision remains the same as set out in my provisional decision, for the same reasons.

In other words, notwithstanding the points made by the CMC, I don't consider that any new material points have been made. I'm still satisfied that the key points remain the same, and have been considered by me, in my provisional decision.

On the face of the evidence, and on balance, despite what the CMC says, I'm still unable to safely say that the recommendation was unsuitable. In other words, I don't have the evidence to safely conclude that the recommendation was unsuitable for Mr and Mrs B.

I'm grateful to the CMC for conveying a detailed account of what Mr and Mrs B say were their circumstances at the time of sale. Whilst it has been useful to have this additional information, I'm afraid it hasn't changed my decision.

Despite the offer, I also don't think I need to speak to Mr and Mrs B, because everything that could reasonably be said, has been said by the CMC in response to my provisional decision.

I'm mindful of the CMC's comments regarding the redress suggested by the investigator. In my provisional decision I said: "*I'm mindful that the CMC's proposed redress methodology (unlike the investigator's redress methodology) suggests that Mr and Mrs B weren't willing to take any risk at all – but I don't think that's correct*". This was only an observation I made, I apologise if it was incorrect. It isn't a reason why I'm not upholding this complaint so doesn't impact my decision.

I appreciate the CMC says that if the appropriate questions were asked by the adviser, it would've been clear that Mr and Mrs B's capital shouldn't have been 'gambled' with. But an adviser can only advise based on the information supplied, if Mr and Mrs B didn't provide basic key information about their circumstances at the time, I can't blame the business for this. In any case, I don't believe their capital was 'gambled' with, for reasons I will explain below.

I appreciate Mr and Mrs B say that their recollection is honest and clear but given the passage of time – some 20 years since the point of sale – I must be mindful that memories can fade, especially in relation to their interaction with the business.

In 2000, almost a decade and a half since Mr B's accident, I think Mr and Mrs B would've been aware of their circumstances at the time. Based on what they now say, I don't think their circumstances meant that they couldn't or shouldn't have been advised to invest at all, if that's what they wanted to do. On balance, I'm satisfied that they did, and most likely made an informed decision to do so. I'm mindful that they'd previously invested in a similar product.

Based on what the CMC says, I note Mr and Mrs B's small mortgage and essential bills were covered by various benefits, and money for minor luxuries such as holidays came from Mrs B's income. I don't believe this meant they shouldn't have been advised to invest.

Even if Mr and Mrs B saved up their money, slowly over a period by frugal spending/savings, by 2000 they still had available a sum of £36,000 from which they could comfortably invest £10,000. Despite what the CMC says, I don't believe this investment was akin to them 'gambling' with their money. As I said in my provisional decision, I can't safely say that the recommendation was "heavily" invested in equities based on a recent fund fact sheet, or that it involved more risk than Mr and Mrs B were willing to take.

Despite what the CMC says, there's nothing to suggest that Mr and Mrs B would've needed their money within the term of the investment, or if they did – for any unexpected expenses – that they didn't have access to a reasonable amount of funds, even after investing the £10,000.

As I mentioned in my provisional decision, Mr and Mrs B kept the investment a year over the minimum required fixed term, which would suggest – albeit with the benefit of hindsight – that they didn't need the money and weren't unhappy with the advice they received. I also note that they made a gain on their investment, which I assume was in line with their expectation or they would've complained at the time.

Despite what the CMC says about Mrs B, there was no reason why she couldn't obtain permanent work if that's what she wanted. I note from the CMC's recent response Mrs B went on to take on a permanent position of employment.

Whilst I've still not seen a fact find or suitability letter to confirm why exactly Mr and Mrs B were made this recommendation, this doesn't mean I can safely conclude the advice was unsuitable.

On the face of the (limited) available evidence, and on balance, I'm unable to uphold this complaint and give Mr and Mrs B what they want.

My final decision

For the reasons set out above, and in my provisional decision, 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 B and Mr B to accept or reject my decision before 25 February 2022.

Dara Islam
Ombudsman