

The complaint

Mr H complains that Aviva Life & Pensions UK Limited ('Aviva') gave him unsuitable investment advice.

This complaint is brought on behalf of Mr H by a claims management company but to keep things simpler, I'll refer to Mr H as the complainant.

What happened

Mr H sought investment advice from a financial adviser on behalf of Aviva in May 2000. He did so after he had inherited a sum of money.

Acting on the adviser's recommendation, Mr H invested a lump sum of £10,000 in a managed bond that was described as a '*deferred distribution fund*'. Several months after he did this, he contacted Aviva again and switched his funds into another managed bond described as a '*with profits sub fund*'.

Mr H was looking to invest as he wanted his funds to have greater potential for growth compared to conventional deposit-based savings accounts.

Mr H made several withdrawals throughout the life of the bond and surrendered the investment in 2015. In total he received around £12,990 from withdrawn amounts and from the final surrender value of the bond combined.

Mr H felt that, as an inexperienced first-time investor, he was advised to take too much risk when investing.

When Mr H complained to Aviva, it said his complaint was out of time and it was too late to complain about what happened in 2000. It said he ought to have known at the time he surrendered the bond, whether he had a complaint or not, this being in 2015. An investigator asked for Aviva's permission to look into the complaint on the merits after telling it why he felt our service should look into it. Aviva decided that we could investigate Mr H's complaint. So, the investigator looked into what happened.

Our investigator didn't recommend upholding the complaint. He felt Aviva had gathered enough information in order to be able to provide a recommendation. He then felt overall that Aviva's investment recommendation had been reasonable as it broadly reflected Mr H's risk attitude and met the recorded investment objective of capital growth within the fact find that its adviser carried out. Our investigator was satisfied that Mr H had ample emergency cash savings to fall back on if needed. So, he didn't feel he had seen enough to uphold the complaint.

Mr H disagreed. He said that as a first-time investor the risk level recommended was too high. Mr H asked for an ombudsman to review the complaint and so it comes to me to decide.

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.

I can see that the crux of Mr H's complaint is whether the advisor on behalf of Aviva gave advice that was suitable for him at that time. So, I have looked into this further.

I have first of all looked at what Aviva gathered. I can see that it completed a fact find in order to use the answers provided. I think Aviva was entitled to rely on what Mr H said here and that the answers provided were a reflection of what Mr H wanted at that time. Although the form wasn't filled in as comprehensively as it could have been, I think the adviser had gathered enough to be able to make a recommendation.

When thinking about whether Aviva gave Mr H suitable investment advice, keeping in mind that all investment carries some degree of financial risk, I've thought about the following key questions:

- was Mr H in a strong enough financial position to be able to invest? If so,
- thinking in particular about the amount invested and the risk this involved, was the investment advice Aviva provided suitable for Mr H?

With this approach in mind, I've thought about Mr H's financial situation in 2000 when Aviva provided investment advice and made its recommendations to Mr H.

I don't know the full extent of discussions about Mr H's financial situation that took place between the parties. But looking at Aviva's fact find document completed during the meeting in May 2000, when Mr H sought advice from Aviva, he had around £41,000 in a deposit account, made up of monies received from an inheritance and also from an existing cash ISA. His property was also listed down as an asset.

Mr H was in secure employment. He told the adviser wasn't looking to retire in the short term and didn't foresee any changes in income. He said he had disposable income each month of £100.

There's nothing to suggest Mr H expected to have any large expenses or that he told Aviva he had any big spending plans for his money. Latterly he has told our service he was looking to spend all but £13,000 of it on home improvements. But I can't see that Aviva would have known this at that time.

According to the fact find that Aviva carried out, I think it's fair to say that Mr H looked to be in a position where he could afford to invest some of his cash with the aim of capital growth. Mr H looked to invest £10,000, leaving £6000 in a cash ISA and £25,000 on deposit for any unexpected expense.

I don't think the amount Mr H was looking to invest was too much in his particular circumstances and I don't think the adviser ought to have had any concerns at this stage about that or that he couldn't afford to invest. And so, I've gone on to think carefully about whether the fund Aviva recommended was suitable for Mr H's needs - which seems to me to be the central part of his complaint.

Mr H has told our service he was a first-time investor. So, I think it's fair to say his financial experience was limited. Aviva needed to take this into account and ensure Mr H was given

the advice he needed to understand his investment options before accepting the recommendation.

Aviva has produced paperwork including a fact find document showing that Mr H was asked a series of questions to find out what he thought about his financial situation and what he wanted his money to achieve. Mr H then signed this document.

Mr H told Aviva that he wanted a return on his money and the potential for capital growth. In the recommendation letter the adviser says:

“We have discussed the greater security inherent in deposit type accounts. However, you’re prepared to exchange this security for the potential greater returns available in the longer term (i.e. five years) from investment in equities.”

This suggests to me a conversation was had about Mr H’s risk attitude. This led to Aviva identifying Mr H’s investment approach as ‘moderate secure’ – which was the third of four options in identifying Mr H’s attitude towards investment. The four categories on the fact find form were listed as “guaranteed, highly secure, moderately secure and moderately speculative”. So, I think, by choosing a higher category from those listed, Mr H was demonstrating his willingness to take on risk in order to achieve his objective of growth.

The fact find also lists a question “do you have a specific sum in mind you wish to invest at the moment?” and the answer given is “yes £10,000”. So, the adviser would have ascertained from Mr H that he wanted to invest £10,000, he was looking for growth and was willing to take on some risk to obtain it. And as I have already concluded he was at that time in a position to invest the amount he wanted to.

The adviser from Aviva recommended the ‘Deferred Distribution Fund’. The guide provided by Aviva regarding this fund, describes it as follows:

“Deferred Distribution Fund

Aim: steady long-term growth arising from both income and capital from a diversified portfolio of UK securities.

Risk grade: Moderately Secure

Profile: the fund’s cautious investment strategy was developed from the original Distribution Fund. Its asset mix is broadly similar, focusing on top quality UK holdings. The difference is that this fund does not aim to produce an ‘income’, but channels its efforts into making money grow by immediately reinvesting any income its assets produce.”

The description provided seems to me to fairly reflect and match Mr H’s risk attitude and his objectives as shown in the fact find. I don’t think Aviva had any reason to think that Mr H had misunderstood its advice or that he lacked capacity to decide this matter for himself after having had advice from Aviva.

And I think that the recommendation to invest around £10,000 in this particular bond does recognise Mr H’s investment priorities whilst fairly reflecting his ‘moderate secure’ risk approach, as discussed by him with the adviser.

I think, on balance, that he had the capacity to take on the risk he had agreed to as well.

I say this because of Mr H’s financial circumstances at that time. Mr H held a further £31,000 in inheritance cash and from his cash ISA. The amount Mr H was investing

from this represented around a quarter of his overall cash reserves. So, although he held relatively low disposable income, and hadn't taken on this type of risk before, he held three quarters of his overall cash reserves. So, I think at the time the adviser recommended this investment, Mr H had the capacity to absorb any losses from the assets he held.

Taking everything into account, I think Mr H knew he was signing up to a level of risk for this particular investment in order to obtain the capital growth he hoped for, and he held the capacity to take on this risk. The investment seemed affordable for him too. All in all, this leads me to conclude that I haven't seen enough to make me think that the bond was too risky for Mr H or otherwise unsuitable or that any other advice Aviva provided was unsuitable.

I appreciate that what I've said here will come as a disappointment to Mr H, but I hope setting things out as I've done helps explain why I've come to this overall conclusion.

My final decision

I do not uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 31 October 2022.

Mark Richardson
Ombudsman