

The complaint

Mr d complains that Aviva Life & Pensions UK Limited wouldn't allow him to transfer his pension plan, and that it invested it in a with profits fund without his authority.

What happened

Mr d had a Section 32 personal pension plan with Aviva that included a guaranteed minimum pension (GMP).

The retirement date on the pension was in 2019. In 2018, 6 months ahead of the retirement date, Aviva wrote to Mr d with details of his pension and his options. It explained that his Section 32 pension had a GMP.

Mr d told Aviva that he wanted to transfer his personal pension to a different provider. But Aviva informed him that the GMP on his pension had to be paid, and explained that his fund wasn't large enough to purchase that GMP on the open market. Which, Aviva said, meant Mr d wasn't able to transfer his policy.

Mr d complained to Aviva in June 2021 about the fact that he couldn't transfer his policy. He thought that there had been a stage in January 2021 when his pension fund was large enough to cover the cost of providing the GMP, and he should have been informed that he could transfer at that point. He was unhappy that his pension had been re-invested in with-profits and his pension age extended a further ten years.

Aviva didn't uphold his complaint. It provided an explanation why Mr d had been unable to transfer his pension. And it explained why his fund had been re-invested in with-profits, explaining that Mr d could still take his pension at any stage and didn't have to wait until age 75.

Mr d wasn't satisfied with Aviva's response and referred his complaint to our service.

Our investigator looked into what had happened. He didn't think that Aviva treated Mr d unfairly by explaining why it couldn't transfer the pension, or the way it treated the with-profits fund. But he thought that Aviva ought to pay Mr d £300 for the distress and inconvenience caused by failing, at times, to respond promptly to requests for pension valuations. And suggested that Aviva send a new pension valuation. If not sent within a month he suggested that should be increased to £400 for the additional inconvenience.

Aviva agreed to the compensation if Mr d accepted the resolution. Mr d didn't accept, so the matter has been referred for an ombudsman 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.

I would like to assure Mr d that I've seen and considered everything that he's submitted over the course of this case. I don't underestimate the time that he's given to arguing his case. So

I can see how invested he is in this issue. I should explain that our role is to bring complaints to a resolution in a fair and impartial way. To do this I need to consider what is at the heart of the complaint, so I hope Mr d understands that I haven't addressed all the points that he's raised in the time his case has been with us. I know he will be disappointed but I agree with our investigator for similar reasons that he's already been given. I hope he understands my reasons that follow.

I think that Mr d's original complaint had two main elements. The first of these I would summarise as being that he was told he couldn't transfer his pension with Aviva. Mr d was informed that the pension he held was a Section 32 pension. Which was a type of pension that was intended to accept transfers from occupational pension schemes. A feature of this pension was that it had to provide a GMP. This was a valuable protection. It meant that the pension was guaranteed to provide an annuity of a certain value. Even if the fund didn't grow to a sufficient size to be able to ordinarily buy that annuity.

Aviva have explained that's what happened here. Aviva explained to Mr d that he couldn't transfer his pension until the fund was large enough to cover the cost of the GMP. Any receiving pension scheme would have to guarantee to provide the same GMP that was attached to that pension. So it was reasonable for Aviva to explain that. It was unlikely that any other pension provider would undertake to provide a GMP in exchange for a transfer that was not large enough to buy it.

This meant that, unless the fund value exceeded the cost of the GMP, then Mr d's options were limited to taking his GMP. I understand Mr d's frustration that he doesn't know whether or not that point was reached. The fund value varied on a daily basis. But so did the cost of providing the GMP. And the cost of the GMP was not a straightforward thing for Mr d or Aviva to be able to see on a daily basis. It required an actuarial calculation based on a number of factors. It wasn't something that I think it would be fair to expect Aviva to calculate every day to then compare. And even if a point was reached where the fund was large enough, there was no guarantee that would still be the case at the point the transfer could go ahead.

On the times that Mr d asked, Aviva confirmed that his fund wasn't large enough to purchase his valuable GMP. Which I think was fair. So, as explained by our investigator, Aviva did nothing wrong in letting Mr d know that he couldn't transfer his pension. Had it not, Mr d may have gone to the expense of obtaining independent financial advice, only to be told at that stage that he couldn't transfer his pension. Which I don't think would have been fair.

In his original complaint to us, Mr d also raised the issue of Aviva re-investing his pension in a with-profits fund for ten years. I've looked at what happened and I don't think that is what Aviva did.

Mr d's pension was a with-profits section 32 pension. It was always invested in a with profits fund. And was the only investment option linked to the pension. It was only moved from the with profits fund at Mr d's normal retirement age in order to provide his benefits. That was explained in his correspondence in a way that I think was clear.

As Mr d didn't respond to the retirement pack that Aviva sent him, Aviva had to make a decision what to do. Aviva wrote to Mr d to explain that it would change his retirement age on his policy to 75, and re-invested his pension into the with profits fund it had been in. It wasn't a fixed term investment. Mr d always had the option of taking his pension at any stage from that point. And I don't think Aviva's correspondence suggested otherwise. Leaving his pension disinvested would have denied Mr d investment returns on his fund. It wouldn't have been in his best interests. The original pension he purchased was a with profits pension. So I don't think Aviva did anything wrong in the way it treated this.

I've looked at the log of contact that Aviva had from Mr d. He was in contact with them quite regularly and I've seen no suggestion that he asked Aviva to provide him with his pension, in the limited way that was available to him. The correspondence he was sent included information about how he could obtain financial advice. As well as giving the details of the financial adviser already linked to his pension plan. It wasn't Aviva's role to provide Mr d with advice about the most suitable way for him to take his pension. But it did need to provide information about his options. Which I think that it did.

Whilst not forming part of Mr d's original issues brought to us, our investigator identified that Aviva had, at times, failed to provide Mr d with the information he requested in a timely fashion. I've seen from the log of contact that Mr d contacted Aviva a number of times chasing up his pension quotes.

This is a service failure that caused frustration for Mr d. I don't think that it caused a delay in Mr d taking his pension. Mr d has shown no intention so far of wanting to take the pension in the form of the GMP. Which was an option that I think was always clearly available to him. He had the claim form for this in 2019 and a number of times subsequently. I think that it's more likely than not that he was holding out for something that he wasn't able to do.

For the above reasons, I think that Aviva should pay Mr d £300 in compensation for the inconvenience that he was caused by having to chase up requests that he'd made. I acknowledge that Mr d has spent time explaining the personal difficulties that he's experienced since 2019. I'm sorry that has been a difficult period for him. But I can't attribute the distress of those issues with the failure that I think Aviva are responsible for.

I can see that our investigator included a condition that suggested that Aviva should provide an up to date pension valuation within a month, although Mr d didn't accept the investigator's view. None the less, I've asked Aviva to provide an up to date valuation which it tells us it has now done. So I don't think that it's necessary to now include that condition.

My final decision

For the above reasons, I partially uphold Mr d's complaint. Aviva Life & Pensions UK Limited must pay Mr d £300 compensation for the inconvenience caused.

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

Gary Lane
Ombudsman