

The complaint

Mr H complains that Aviva Life & Pensions UK Limited ("Aviva") gave him unsuitable advice to invest in a Flexible Savings Plan.

Mr H is being represented by a claims management company in the complaint, but for ease of reference, I shall refer to Mr H only throughout my decision.

What happened

Mr H met with Aviva in July 1991 to discuss his savings and retirement planning. Aviva completed a fact find with Mr H which recorded his circumstances at the time as follows:

- He was aged 29, was employed, was in good health and had no dependents.
- His annual income was around £19,000 and he was a standard rate taxpayer.
- He had £6,000 in cash and had an existing bank loan of £4,000.
- He had no savings, and it was recorded he had no pension (Mr H has since confirmed that he has been a member of the Civil Service pension scheme since 2 July 1990).
- His priority was around his standard of living in retirement.
- A pension was discussed with him at the time, but the recommendation was not taken up.
- His attitude to risk was recorded as being three/four on a scale of one to five with one being cautious and five being adventurous.

Following this, Aviva recommended Mr H invest £40 each month, increasing annually, into a Flexible Savings Plan with a maturity date of 2 November 2011. Mr H went ahead with the advice with 80% of his invested funds being in the Managed Fund and 20% in the Venture Managed Fund.

On 6 June 2001 the plan was made paid-up, and no further payments were received into the plan. At the same time Mr H switched the proportion of his investment in the Venture Managed fund to the Managed fund.

The plan was surrendered on 28 May 2004 and Mr H received around £7,300.

Mr H complained about to Aviva in March 2024 as he was unhappy with the advice he received in July 1991. In summary he said:

- He had no savings and was living in rented accommodation and so it's not clear why a unit linked savings plan for 20 years was recommended.
- He had no prior investment experience yet was advised to invest in a unit-linked investment.
- The charges under the plan were not made clear to him and no alternatives investments were discussed.
- Life cover may have been needed for tax qualifying purposes this doesn't change that the advice was not suitable.

Aviva considered his complaint but didn't uphold it. In summary, it said it was satisfied its recommendation was suitable for Mr H's agreed needs. It said the selected investment funds within the plan matched his established attitude to risk and that accurate details regarding the plan were provided to him to enable him to make an informed decision.

Mr H didn't agree and so he referred his complaint to this service for an independent review.

One of our investigators considered the complaint but didn't think Aviva had acted unfairly. In summary, they said:

- The illustration shows that the plan provided Mr H with immediate life cover of £13,320 or the value of the units, if higher.
- The life cover itself was only a small part of the plan and allowed the plan to become qualifying and therefore offer benefits not available with a non-qualifying policy – including an exemption from income tax and capital gains tax on maturity and income tax relief on premium payments.
- The fact find noted that Mr H wanted to take advantage of the qualifying benefits.
- So whilst Mr H says he had no need for life cover at the time, their opinion was that he was fully aware that life cover was provided by the plan and it came with tax benefits he wished to take advantage of.
- Prior to 1 January 1995, there was no requirement for advisers to discuss alternatives and so they didn't think that Aviva's failure to do so meant the recommendation was unsuitable.
- They noted the pension plan recommended by Aviva was given with the intention of maintaining his standard of living when he stopped working, but this was not taken up by him.

Mr H didn't accept the investigator's findings. In summary, he said:

- No explanation or discussion took place regarding risk and simply ticking a box is not indicative of any discussion being had.
- He had no investment experience, yet he was advised to invest in a unit-linked plan.
- The plan was had 20% invested in the Venture Managed Fund which could potentially have been a high-risk fund.
- The recorded priorities and the plan sold are completely at odds with each other, as his priorities were for pension planning as well as increasing his income and getting a good return from his savings.
- He didn't even have any savings and had an outstanding £4,000 bank loan at the time.
- There was absolutely no need for him to have life cover.
- The tax qualifying argument is an extremely poor one as the structure of the charges and upfront commission meant the plan accumulates no value for two years and outweighs any tax benefits.
- The fact that he couldn't maintain payments for the 20-year period clearly shows the plan was not viable in the first place.

As Mr H remained unhappy, the complaint has been passed 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.

Mr H's plan was taken out over 30 years ago and so the evidence available for me to consider is limited. This makes it difficult to determine exactly what was discussed with Mr H at the time of sale. Where the information is incomplete or facts aren't agreed by the parties involved, I must base my decision on the balance of probabilities – in other words, what I consider is more likely to have happened in light of the available evidence and the wider circumstances.

Having thought about everything, I can't safely say that the recommendation was mis-sold or that it was unsuitable given Mr H's circumstances. I'll explain why.

Although the Financial Ombudsman Service doesn't always have power to investigate complaints about events that happened more than six years ago, Aviva has consented to us looking into Mr H's complaint about what happened in 1991 when it recommended this plan. So, I am satisfied that I can consider the complaint.

In addition to what the parties have told me, I've taken into account the information in the point of sale paperwork provided, including the fact find carried out by Aviva. This shows that Mr H was in paid work, had no dependents and was living in rented accommodation. His net monthly income was £396 per month, he had £6,000 in cash, giving him a useful cash reserve to fall back on if needed. After allowing for his rent, he was left with a net monthly disposable income of £256. I note that Mr H also had a loan for £4,000 but the fact find doesn't record any information regarding his repayments.

I am satisfied that Mr H was in a strong enough financial situation to be able to invest £40 per month. This is borne out by the fact he seems to have maintained these payments into the plan for the next 10 years or so and he appears to have had sufficient disposable income to invest this amount.

I appreciate that this was a 20-year plan and he cashed the plan early in 2004. But I've not been provided with evidence that paying the premiums caused Mr H financial difficulty. And the fact he kept the plan as long as he did doesn't suggest that early surrender was the result of the premiums not being affordable, rather than for another reason, such as Mr H wanting to redirect his expenditure. Regardless, I've not seen anything to show the plan wasn't affordable for him at the time Aviva advised him to take it out or that Aviva thought he was likely to surrender the plan when he did. So I don't feel I can fairly conclude the early surrender date shows the plan was unsuitable for Mr H at the time he was sold it.

There isn't a record of any detailed discussion about Mr H's investment objectives. The fact find simply notes that his priorities were increasing his income and getting a good return from his savings, as well as maintaining a standard of living in retirement. I note from the fact find document that Mr H's pension plans were discussed but I understand he didn't go ahead with Aviva's recommendation.

Mr H had no structured savings plan in place and, in any event, there was a risk that if he continued to keep his savings only as cash deposits, the long-term effects of inflation would likely erode the value of his money. So I find it was reasonable for Aviva to recommend a risk-based investment to Mr H.

Mr H needed to be comfortable that the level of risk associated with the recommended investment reflected his risk approach. It's not clear what discussion took place around Mr H's ATR. The fact find simply records his ATR as being three/four on a scale of one to five (with one being cautious and five being adventurous). But I've taken into account that out of a choice of investment options, Mr H selected to invest in 80% in the Managed Fund and 20% in the Venture Managed Fund. Unfortunately, Aviva doesn't have a record of the make up of the funds and so I can't say with any certainty what level of risk was associated with

each fund, but I think it's reasonable to assume that both funds carried some risk, with the Venture Managed Fund likely to have carried slightly more risk than the Managed Fund.

I acknowledge that Mr H didn't have any investment experience. So, without further evidence, I don't think it would have been reasonable for him to be fully invested in a particularly high-risk fund that could have offered him scope for bigger returns. On the other hand, considering Mr H's particular circumstances and financial situation, he appears to have had no particular need to be especially conservative in his risk approach. I say this as he was 29, had no dependents and had some cash reserves. So whilst Mr H was invested partially in the Venture Managed Fund, I don't find the fact that 20% of his funds were placed in the Venture Managed Fund to be so concerning as to reach a finding that the overall investment was unsuitable. Both funds offered Mr H the chance to grow his money as he hoped to do and I note that the investment brochure provided by Aviva shows that, although the plan was intended to be a long-term investment, Mr H could make some withdrawals without having to end the plan.

I've also acknowledged Mr H's comments about the disclosure of charges for the life cover and that he didn't require any cover. Whilst I acknowledge that Mr H may not have felt he needed life cover at the time, life cover was often added to savings plans to make them "qualifying" – allowing for the final amount paid at maturity to be free of any further tax for the policyholder. I note that Aviva set the sum assured at the lowest possible amount to make his plan qualifying. Therefore, Mr H was paying the lowest amount in life cover premiums as possible to allow him to benefit from the plan being qualifying for tax purposes.

Looking at the investment brochure, I note that Aviva provided information regarding the charges Mr H would pay over a 20-year period. This explained that for a monthly investment of between £30 and £49, 0% of his invested funds would be used to purchase units in the first year and that this would increase to 40% in year two. Aviva explained that 103% would then be used to purchase units for the rest of the term. So I'm satisfied Aviva provided Mr H with clear, fair and not misleading information regarding the charges associated with the plan.

On a final note, I appreciate Mr H feels Aviva failed to provide him with alternative investment options, however, as the sale was prior to 1 January 1995, there was no requirement for Aviva to discuss alternatives. Rather, it only had to ensure that its recommendation was suitable. I'm also aware that the sale pre-dated Individual Savings Account and that Mr H's monthly payment was lower than the common minimum requirement set by plan managers to be able to invest in a Personal Equity Plan.

All in all, having considered everything, I'm not persuaded Aviva's recommendation for Mr H was unsuitable.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 April 2025.

Ben Waites
Ombudsman