

## **The complaint**

Mr D has complained about advice he says was given by Aviva Life & Pensions UK Limited ('Aviva') to transfer his occupational pension scheme ('OPS') into a personal arrangement. Mr D states this advice was unsuitable and has caused financial loss.

Mr D has stated that the advice was originally given by Friends Provident who are now part of Aviva, as such it is Aviva who is responsible for answering this complaint.

## **What happened**

Mr D completed a Friends Provident transfer application form on 30 October 1995.

This form confirmed Mr D was living in Germany at the time of advice.

The transfer value was around £5,300 with the funds to be split equally between the Managed and Stewardship funds. The policy was written based on a selected retirement age of 60.

At the bottom of the application form the "Friends Provident Branch Office" box was left blank, with the "Agent" box being completed showing an agent number and confirming a business name and address in Germany. This business has been referred to as Firm A throughout the remainder of this decision.

The transfer was completed in January 1996.

Having concluded that the advice to transfer his OPS was not in his best interests, Mr D registered a complaint (through his representatives) with Aviva in November 2023.

Aviva issued its complaint response on 11 December 2023.

This stated that whilst Aviva were the policy provider, they had not provided any advice in relation to the transfer of Mr D's OPS. They said that their records showed that the advice had been provided by a Mr L working for Firm A based in Germany. Aviva provided an address for Firm A and wrote to them on Mr D's behalf.

Given they did not believe they had provided any advice, Aviva did not uphold the complaint.

Mr D contacted Aviva in January 2024 asking for further details on Mr L and Firm A.

Aviva provided the address they had for Firm A, explained they no longer held any point-of-sale documentation, and said that no FCA number could be provided as Mr L / Firm A were based overseas.

Unhappy with Aviva's complaint response Mr D referred his complaint to this service in May 2024.

Our investigator looked into things, did not uphold the complaint, and concluded that there was not enough evidence to say that Friends Provident / Aviva had provided advice to Mr D.

Mr D did not agree stating that all the point of advice documentation from 1996 related to Friends Provident, that the adviser had held himself out to be a Friends Provident adviser, and that he had never heard of Firm A. Mr D said he had only agreed to the transfer on the basis that he was dealing with Friends Provident.

Our investigator was not minded to change their opinion and as no agreement could be reached the case has been passed to me for a final 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 firstly like to note that, in line with what our investigator has already said, this decision will only consider whether Friends Provident / Aviva are responsible for any advice Mr D received in 1995 / 1996.

This decision will not consider whether Friends Provident should have accepted a transfer of an OPS from an international / unregulated adviser. This issue has not been raised with, or investigated by, Aviva and as such it would not be appropriate for me to consider it further here.

I was not present at the 1995 / 1996 meetings between Mr D and his adviser and as such I cannot say for certain what was or was not said. There is also limited paperwork available from this time.

Aviva have provided the original application form but have no further point of sale documentation available.

Mr D has stated that he was provided with paperwork and a business card in 1995 that all indicated the adviser worked for Friends Provident. Unfortunately, none of this documentation is on file.

Where there is limited or incomplete evidence, I must make my decision based on what I consider most likely to have occurred, based on that evidence which is available and the principles of fairness and reasonableness.

I have firstly considered the paperwork which is available.

The application form is clear that Mr D was living in Germany at the time of advice, with the agent code included in the "Agent" box on the form including a code beginning 790. Aviva have confirmed this code related to international agents. In addition to the code, the box included details for Firm A, a business with an address in Germany.

It is important to note that in this context whilst the application form had the "Agent" box completed, this does not indicate that the adviser was an employee of Friends Provident at that time, with the code included indicating that the agent was not a tied agent or appointed representative. Aviva have also confirmed they can find no historical evidence of Friends Provident ever having international appointed representatives.

Whilst a tied agent would only have been able to provide advice on Friends Provident products, the fact that the code included indicates Mr L / Firm A were not tied agents supports the conclusion that they were independent advisers who could have recommended other products / providers, and who would themselves be responsible for ensuring their advice was suitable.

Despite not providing any point-of-sale paperwork, I accept Mr D's commentary that a significant amount of the paperwork referenced Friends Provident however I do not believe this is sufficient to state that Friends Provident provided advice.

The product recommended was a Friends Provident policy, as such a significant amount of the documentation from that time would refer to (and would potentially have been produced by) Friends Provident. Application forms, illustrations, and Key Features documents would all likely feature Friends Provident's name and logo prominently. This, however, is entirely usual and is not an indication that the advice itself was provided by Friends Provident.

Given the limited documentation on file, I have reached the same conclusion as our investigator, that there is insufficient evidence to conclude that Friends Provident / Aviva are responsible for the advice provided to Mr D.

This conclusion is additionally supported by the fact that neither Mr L or Firm A appear in a search of the FCA register, indicating that neither were authorised to give financial advice in the UK – something which would likely have been required of an employee or tied agent of Friends Provident.

Furthermore, following the issuance of our investigators findings Aviva have subsequently confirmed that initial commission was paid to Mr L at Firm A as the original selling agent of Mr D's policy. This adds further weight to the conclusion that it is Firm A, based in Germany, and not Friends Provident / Aviva who are responsible for Mr D's advice.

Whilst I appreciate that Mr D may have thought he was dealing with Friends Provident, and have considered Mr D's commentary stating he only proceeded with the transfer on the basis that it was Friends Provident providing him with the advice, on balance, the weight of evidence supports the conclusion that it was Firm A who were providing Mr D with advice and I do not consider it reasonable to now hold Aviva accountable based on Mr D's own conclusions from 1995 / 1996.

As such, in line with the outcome already communicated by our investigator, I am not upholding this complaint.

### **My final decision**

In line with the commentary above I am not upholding this complaint and require no further action from Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 19 November 2024.

John Rogowski  
**Ombudsman**