

## The complaint

Mrs R is represented by a claims management company ('CMC') in bringing her complaint. The CMC says Mrs R was given unsuitable advice by Aviva Life & Pensions UK Limited ('Aviva') to invest £5,000 in a CGU Life Guaranteed Security Portfolio Bond in March 1999.

## What happened

Mrs R received advice from a representative of CGU in February 1999, alongside her husband. It the advice given to Mrs R that is the subject of this complaint. Aviva now takes responsibility for CGU, and I'll refer to the business hereafter as Aviva for ease of reading.

The bond was a lump sum investment. without a fixed end date, that aimed to provide growth and optional income, and it was designed to be held for a medium to long term, However, it included a guarantee that the capital would be returned after five years, should Mrs R wish to surrender the bond in full at that point (if earlier, exit penalties would apply). Any investment growth was linked to the performance of CGU's Guaranteed Fund, which was a mixed asset fund comprising equities, fixed interest securities, property, and cash.

On 21 March 2004, Mrs R wrote to Aviva and requested that her policy be surrendered at the five-year guarantee date. Aviva returned the sum invested of £5,000 to Mrs R on 31 March 2004.

In June 2023, the CMC complained to Aviva. It said it could not accept that the proposal to take out the investment had been appropriate for Mrs R in 1999. Mrs R had both a limited and varied disposable income – and this meant a locking her capital up in the way that the adviser suggested wasn't appropriate for her needs. The investment also had a high prospect of loss in its early years because of its exposure to equities.

In April 2024, Aviva rejected the complaint. It said after reviewing the evidence from the time of the sale, it was satisfied that its adviser recommended a suitable product for Mrs R's needs. It was also satisfied that its adviser gave Mrs R accurate information as to how the bond operated, which included the risk factors and charging structure.

Further, Aviva said the adviser's recommendation report confirmed Mrs R would have an adequate emergency fund after following his advice to invest £6,000 into the bond (which Mrs R then decided to reduce by £1,000). There was no evidence to suggest Mrs R would need access to her investment during the first five years when exit penalties applied.

The CMC thereafter lodged Mrs R's complaint with this service. It made some additional comments it wanted to be considered. It said:

- Aviva had suggested that the investment should have been held for a five-year minimum, but the guidance at the time of the sale was around flexibility.
- However, the bond was not truly flexible as it was limited on fund switches and losses could be incurred with early surrender.
- Mrs R had very limited investment experience and little capacity for loss.

- At the time of the advice, she and her husband had an outstanding interest only mortgage of £75,000.
- The adviser could have merely advised Mrs R to leave her cash on deposit given the rate for that account was a projected 4.75% at the time of the advice.
- Instead, a large proportion of Mrs R's cash was left to (potentially) erode in value in the event of her only receiving back the guaranteed return.
- This seems contrary to Mrs R's recorded very cautious attitude to risk.

One of our investigators reviewed the complaint, but he did not believe it should succeed. He said he believed Aviva had made a suitable recommendation to Mrs R, considering her documented circumstances and approach to risk. Further, Mrs R was given sufficient information to understand the risks presented. He also reflected on the source of Mrs R's funds, given her financial position. However, he didn't think the adviser had acted unfairly in proposing the investment to Mrs R, which was in line with achieving her financial objectives.

The CMC said Mrs R wanted her complaint to be forwarded to an ombudsman. On her behalf, the CMC made several further written submissions, noting:

- Despite what was recorded by the adviser, Mrs R's income was variable as she was a seasonal worker.
- It was incumbent upon the adviser to obtain the relevant facts to provide an appropriate and tailored recommendation.
- A reasonable adviser would have questioned Mrs R further in respect of her income.
- Mrs R had an outstanding interest only mortgage, and consideration ought to have been given as to her plans to repay this sizeable borrowing as an alternative to taking out an investment bond.
- The documentation issued to Mrs R at the time of the sale suggested the bond was flexible – when it wasn't.
- In fact, the bond had no flexibility whatsoever; there was no facility to exit the investment early (without notable financial penalty) or to switch funds.
- The information given to Mrs R at the time of the sale was therefore misleading.
- Despite what the investigator said, the CMC feels little weight should be given to the fact Mrs R held a PEP at the time of the advice.

Aviva said it understood the complaint would be referred to an ombudsman. It made four additional comments:

- Mrs R was asked about her occupation and income at the time of the sale, along with her husband; it was therefore reasonable for the adviser to rely on their answers about their earnings and expenditure and base the advice on those answers.
- The interest only mortgage had been considered and addressed by the adviser in his recommendation.
- The understanding that Mrs R was prepared to accept a reasonable level of risk with the investment was based on Mrs R's documented circumstances and risk tolerance.
- The Portfolio Bond product literature provided accurate and not misleading information about the recommended product, including its flexibility.

The complaint has now been passed to me.

### **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 thank the parties for their considerable patience whilst this matter has awaited an ombudsman's decision. Having reviewed everything carefully, I am also of the view that this complaint should not succeed. I'll summarise my reasons for reaching that view below.

The Financial Ombudsman Service provides informal dispute resolution. My remit is to make independent findings on what I believe to be fair and reasonable to both parties in the circumstances; this does not follow a prescribed format or require chronological assessment of every incident in the complaint history. Instead, I will set out my reasons for my findings on what I consider to be the central issues in this complaint, based on the evidence before me.

Though the advice took place over 25 years ago, there is some limited information available from the time of the sale, including the adviser's written recommendations and policy key features documentation. In reaching my decision, I will take into account relevant law and regulations, regulator's rules, guidance, standards and codes of practice, along with what I consider good industry practice at the relevant time. And where the evidence is incomplete, inconclusive, or contradictory, I'll make findings on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence before me and the wider surrounding circumstances.

That the CMC is assessing the investment advice now by comparison to historic interest rates is said with the benefit of hindsight. Mrs R agreed to meeting with Aviva's adviser (alongside her husband) with a view to investing some of the funds she held on deposit. The adviser was required to look at their circumstances at the time of the sale and make recommendations appropriate to their ascertained needs. I must now measure the same, based on the available evidence from both parties and determine if the proposals made by the adviser were reasonable and appropriate.

I have seen the key features information issued to Mrs R at the time of the advice for the bond; this explained how the investments operated and, the possible returns depending on the performance of one of 16 possible investment funds or otherwise (in the event of choosing the guaranteed fund) as guaranteed by return of the original capital after five years. The literature also detailed the various flexibility options and explained clearly about the five-year period in relation to the guaranteed fund. Overall, I'm satisfied that Aviva provided clear and relevant information about the investment as a means to achieve Mrs R's recorded investment aims.

The CMC says that Mrs R had recently received capital as an inheritance. She held £13,000 of savings and was seeking to invest some of this sum to receive greater returns than she could by leaving their funds on deposit. The adviser noted that of the tolerance for risk, Mrs R had "*a very cautious attitude to risk with regard to this particular lump sum*" and for that reason he recommended she place £6,000 into the Guaranteed Security Portfolio Bond.

Mrs R was not a first-time investor as had been suggested, but she had limited experience of investments. She and Mr R had a £70,000 outstanding interest only mortgage (of some £400 per month) with a remaining twelve-year term at the time of the advice and no other liabilities. Further, they were recorded as having over £800 per month available in disposable income. Though Mrs R did have joint responsibility for an outstanding mortgage liability, this was due to be repaid before her retirement. In the circumstances, it was not unreasonable to consider investments alongside this that met her medium and long term financial goals ahead of her retirement, prompted by her recent inheritance payment.

I know the CMC says Mrs R had flexible and varied income – however, I have not seen any suggestion of this from the information recorded at the time of the sale. Mrs R's income was noted as £830 per month. The proposed investment left Mrs R with a further £7,000 on deposit, as well as £7,400 in her PEP. Given Mrs R's recorded aims and objectives of

achieving greater returns than was possible on deposit accounts and that she was sixteen years away from her desired retirement age, I do not believe the proposed investment recommendation was unreasonable (noting it should be held for five years or more), nor do I consider that of itself, the investment posed too great a risk for Mrs R to take given the guaranteed nature of the fund.

I also consider that Mrs R was able to reflect on and consider the advice she received and understood the nature of what was being proposed. I say that for two reasons; firstly, since the adviser proposed that the investment amount be £6,000 and Mrs R asked for this to be amended to £5,000. Secondly, in March 2004, Mrs R wrote to Aviva regarding surrendering the policy in which she set out *"I would appreciate it if you could forward a cheque for the guaranteed amount of £5,000 plus any possible growth that may have occurred to the above address as I do not wish to carry on with this investment"*.

Overall, I believe Mrs R had the capacity to understand how her capital would be invested for a medium term or longer. I am also satisfied she understood the prospect that the investment may not make an additional return, alongside the security of knowing it could not make a loss – and this was in line with her recorded attitude to risk, set out by the adviser within the fact find at the time. That Mrs R understood she could only receive back her invested capital as a minimum was reaffirmed by her letter to Aviva in March 2004.

Taking all of the information in the round, I am satisfied that this investment was within the range of reasonable recommendations that the adviser could have proposed to Mrs R in 1999 in order to meet her medium to long term savings objectives. I consider on balance that Mrs R likely wanted to go ahead with the bond, and that on the information I've seen, the advice was suitable for her circumstances; noting that it was affordable based on her documented income and expenditure, it did not place her capital at risk in line with her cautious risk profile and it was sufficient to meet her recorded investment objectives. I do not therefore think this complaint should succeed or find that the investment was mis-sold.

### **My final decision**

I do not uphold this complaint.

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

Jo Storey  
**Ombudsman**