

The complaint

Mr L complains that Aviva Life & Pensions UK Limited had provided incorrect and incomplete information to him about his pension on a number of occasions. Mr L says that this has meant he hasn't been able to make informed decisions about his pension.

What happened

Mr L holds a pension with Aviva. On 14 February 2019 Aviva wrote to Mr L. The letter said it was in response to a telephone enquiry and provided some information about his pension policy. The letter explained that Mr L's pension was a "corporate deferred annuity" which had been set up in May 1988 using the proceeds from the winding up of a company pension scheme. It said the policy was set up to provide an annual pension of £1,599.31 from 1 August 2025. This would be on a single life basis with 5% escalation, with payments guaranteed for five years. The letter went on to say that *"There may be the option of taking a tax-free cash lump sum, subject to Inland Revenue limits. This will be calculated shortly before retirement"*. Aviva said the pension didn't have a current fund value, but it had a transfer value which at the time was £38,443. It also said there was no automatic right for Mr L to take benefits under the policy at any other time than the retirement date.

Mr L made further enquiries of Aviva and it wrote to him again on 8 March 2019. It said it had retrieved a copy of the annuity bond which detailed the terms and conditions of the benefits secured under the arrangement at the time it was taken. It enclosed a copy of the bond.

I can see that this included a section which explained that, if Mr L chose, prior to the benefits being paid, the pension provider would allow him to commute some benefits and it would pay a cash lump sum (tax free cash – 'TFC'). The document said this would not exceed the maximum cash sum specified in the schedule and there was no guarantee the annuity would be sufficient to provide the maximum cash sum. The schedule, in addition to repeating the annual benefits payable, said the maximum cash sum was £3,742.18.

In July 2019, Mr L signed a letter of authority ('LOA') giving Aviva permission to share information about his pension with a financial adviser I'll call Firm R. Firm R was regulated by the Financial Conduct Authority ('FCA'). This LOA was sent to Aviva and on 25 July 2019, it sent Firm R a letter summarising similar information to that in its February letter to Mr L along with discharge forms to enable a transfer. The letter noted *"This plan does not have guaranteed annuity rates attached"*. The cash equivalent transfer value ('CETV') at that point was £45,745.

On 30 July 2019, Firm R recommended that Mr L transfer his Aviva pension to a self invested personal pension ('SIPP'), withdraw 25% in TFC and invest the remainder in a portfolio that would be serviced by Firm R with support from a discretionary fund manager ('DFM').

Mr L did not accept the recommendation – which he has said because he didn't want to use the proposed investment. And in August 2019, Mr L signed an LOA for another FCA regulated business, which I'll call Firm M, to act for him in respect of his pension. Mr L has said the discussions with Firm M were with a potential view to transferring his pension

benefits.

On 2 September 2019, Aviva wrote to Firm M responding to an enquiry. This set out information about the policy which was largely the same as what was included in the earlier letters to Mr L and Firm R.

A further letter was sent by Aviva to Firm M on 13 September 2019, following a telephone enquiry. This reiterated information about the pension benefits but said that the annual pension was guaranteed. The CETV at that point had increased to £51,436.

Mr L says as his Aviva policy was a defined benefit ('DB') pension – providing guaranteed benefits – and Aviva told both he and Firm M the TFC the policy would pay could not be calculated until close to retirement. Firm M wasn't willing to recommend or support a transfer. He also says he approached another business to discuss this but it too would not support a transfer without having knowledge of the benefit options available under the Aviva policy.

I can see Mr L made a complaint to Aviva in October 2019 about it not being clear in its communication about the benefits being guaranteed, which had caused him to waste time shopping around. I understand Aviva explained that the benefits of Mr L's policy being guaranteed was different to the policy having guaranteed annuity rates. And there doesn't appear to have been any further correspondence about a potential transfer.

On 8 November 2023, Aviva sent Mr L a reminder letter about his pension. This letter said that the normal retirement date was 1 August 2025, and the yearly pension amount was £3,201.31.

Mr L contacted Aviva following this letter and asked for an up-to-date transfer value.

Aviva wrote to Mr L on 23 January 2024 to summarise his pension benefits. This letter said his pension was a single life annuity, would provide a pension of £1,599.31 annually and the retirement date was 20 December 2027. It also said that the CETV at that time was £36,401.

Mr L wrote to Aviva in response asking why the CETV had fallen so much (from £51,436 in September 2019). He also noted the letter referred to the potential option to take TFC and Mr L asked for further details of how this would be calculated so he could try and establish an approximate amount.

Aviva replied on 31 January 2024. Its system notes refer to this as an 'early retirement refusal letter'. This letter said that the pension would pay £1,599.31 per year and the retirement date was 1 August 2025, but referred to the pension as being a set amount rather than escalating by 5%. It said that unfortunately there was no automatic right to take benefits prior to the retirement date but the policy contained the option to transfer and Mr L could take independent advice from a suitably qualified adviser.

Mr L responded saying that the letter had not answered the questions he'd raised. He also raised a complaint about the inconsistent information about retirement date and annual pension amount across the letters he'd received. Mr L also completed an LOA for another regulated financial adviser, which I'll call Firm Q, to act for him, which was sent to Aviva.

Aviva wrote to Mr L on 12 February 2024. This letter said that the transfer value will "*vary depending upon the conversion rates applicable at the time of calculating the value*" and the change in these rates had resulted in the difference in CETV between September 2019 and January 2024. The letter also said there may be the option of taking TFC at retirement. But said this would be calculated shortly before retirement and Aviva was "*unable to provide a*

figure now as this is also relevant to the conversion rates applicable”.

Aviva separately wrote to Firm Q on 6 March 2024, saying that the TFC available would only be calculated shortly before the retirement date as it was dependent on annuity rates.

Aviva sent Mr L another ‘early retirement refusal letter’ on 20 March 2024. When setting out the details of the pension this letter referred to a spouse’s pension being payable.

Mr L contacted Aviva again to say this letter didn’t address his query about TFC and how much he would be able to take under the existing pension. He also raised that it again given conflicting information about the pension benefits – this time that a spouse’s pension was included. We’ve also been provided a recording of a call where Firm Q asked Aviva for an explanation of *how* the TFC would be calculated at retirement, so that it could estimate what this was as part of its advice to Mr L.

Aviva wrote to Mr L on 8 April 2024 confirming there was no spouse’s pension. It repeated TFC *“can only be calculated shortly before retirement”*. And it said the CETV, was variable, those previously quoted were correct and the current CETV was £34,428. Aviva sent a further letter to Mr L on 26 April 2024, in response to his complaint. It acknowledged that it had made errors by giving inconsistent information about aspects of the pension benefits in its previous letters. And would arrange to send Mr L a cheque for £100 for the unnecessary distress and inconvenience caused. It said it felt the letter of 8 April 2024 addressed Mr L’s other queries and repeated TFC could only be calculated shortly before retirement.

Mr L contacted Aviva again saying he still felt it hadn’t answered his queries. He said he knew from what Aviva had told him that it couldn’t give him a figure but he was looking for information about how TFC would be calculated, so he could estimate this and plan for his retirement.

Aviva wrote to Mr L on 7 May 2024. In this letter it addressed a query he’d raised about the value of the benefits. And it went on to say that *“With regards to the tax free cash amount and reduced pension. These are fixed values and will not change”*. And it included a calculation, based on the commutation factor applicable to Mr L, saying that the maximum TFC that could be taken was £6,767.60, which would mean he’d receive a reduced annual pension of £1,015.14. And it reiterated this information in a follow up letter on 20 May 2024.

Mr L complained to Aviva again following this. And he also asked the Financial Ombudsman Service to look into his concerns. Mr L said he’d incorrectly been told for several years that calculating TFC couldn’t be done, only to later be told the commutation factors were fixed and this could be calculated, and could’ve been all along. He said this had prevented him from making an informed decision when he’d previously looked at transferring or making a case to do so. And the CETV value was significantly higher when he’d considered a transfer in 2019, meaning if he’d transferred then he’d have been able to take more TFC (25% of the value at the time which was quoted as £51,436). So, Mr L said he’d suffered a financial loss. Mr L was also still unhappy at the conflicting information about his retirement age and benefits in Aviva’s various letters.

Aviva told our Service when asked that it didn’t usually provide TFC information until shortly before retirement but it had provided this to Mr L because he had complained. It later said it now acknowledged TFC could be quoted sooner.

One of our Investigator’s considered the complaint. They said they didn’t think Aviva’s offer was fair for the repeated mistakes that had been made in correspondence between the two and recommended that it pay Mr L £500 for the distress caused. But the Investigator didn’t recommend that Aviva make a payment to cover any potential financial loss. They said they

couldn't fairly say that Mr L would have transferred his pension if information about the TFC had been provided, given he had received advice to transfer from Firm R but hadn't proceeded.

Mr L did not agree with our Investigator's opinion. And Aviva also disagreed with the recommendation it pay £500. As a result, 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.

I can tell from the available information that Mr L feels strongly about this complaint. And I'd like to reassure both parties that I've carefully considered all of the arguments made and the evidence provided. If I don't comment on or refer to everything that has been said this isn't meant as a discourtesy or because I haven't thought about it. Rather it is because my decision addresses what I think are the key points in deciding the complaint, bearing in mind our role as an informal dispute resolution service and my remit of deciding what a fair and reasonable outcome is.

Aviva acknowledged in its letter to Mr L on 26 April 2024 that it had provided incorrect information about his pension benefits in some of its recent letters. And I agree that there were errors across several letters.

The letter Aviva sent in November 2023 quoted an incorrect annual benefit amount. Its letter of 23 January 2024 gave an incorrect retirement date. The letter of 31 January 2024 incorrectly stated that the annual pension was fixed rather than escalating while in payment. And Aviva's letter of 20 March 2024 incorrectly referred to the policy providing a spouse's pension.

These are several different errors across multiple letters, over several months. I can understand why this would have been frustrating for Mr L. And the lack of attention to detail, which I think this number of different mistakes suggests, would have been concerning to him and would have led him to lose faith in Aviva's understanding and management of his pension.

It has also become apparent, since that initial response to the complaint, that there were further errors by Aviva. Specifically, it did not provide Mr L, or his appointed representatives, information about the level of TFC he could potentially draw from the policy at retirement both in 2019 and early 2024 despite several requests for that information. And it incorrectly told him this *could not* be calculated more than a couple of months before retirement, when this information could have been obtained and shared as the relevant factors impacting this were fixed and known.

Aviva has indicated that its process was not to carry out a calculation in advance of retirement for this type of policy. And later it suggested that there was potentially a lack of knowledge about this product, as it was one that originated with another business and was only transferred to Aviva at a later date. But I don't think either of those explanations mean that it acted fairly or reasonably towards Mr L.

So, I'm satisfied that there have been several failings by Aviva in relation to Mr L's pension. And so, I've thought about how these errors should be addressed.

I think it is worth reiterating the role of our service is to informally review and decide individual disputes on a fair and reasonable basis. We aren't a regulator. And our awards are

not intended to fine or punish a business. Rather, we look at what has happened in the specific circumstances of a complaint and, if we think a business has done something wrong, we look to put the consumer, as close as possible, back in the position they would've been in had that error not happened.

Mr L says that if Aviva had told him the level of TFC and reduced annual income he could potentially take from his pension at the normal retirement age (£6,767.60 and an annual income of £1,015.14) when he'd asked for this in 2019, he'd have pursued a transfer at that time. His CETV was significantly higher then and Mr L says he'd have taken the maximum available TFC at that time following a transfer as he wanted access to some funds for personal reasons and to support his business. But he says, because Aviva didn't provide information about the TFC entitlement, he wasn't in an informed position and the advisers were reluctant and unwilling to advise him, as they couldn't accurately compare the benefits of the existing scheme with alternatives.

I'm satisfied that Mr L was considering a transfer of his pension benefits in 2019. As I said, he completed LOA's giving permission for multiple advising businesses to request information about his pension. And from the available notes, and indeed the report Firm R issued in July 2019, it appears clear he was considering a transfer to meet certain aims that the existing pension could not. He's also provided evidence to show that, in October 2019, after the transfer did not proceed, he borrowed money. Which I think does support that he was looking to raise some funds.

The transfer of guaranteed pension benefits, such as those offered by Mr L's pension, require regulated advice if the transfer value exceeds £30,000. This has to be from an adviser with specific permissions from the FCA to advise on such transfers. The advice is subject to a high level of regulatory scrutiny. And there is a specific section in the Conduct of Business Sourcebook ('COBS') relating to this type of transfer (COBS 19). This requires businesses, amongst other things, to carry out detailed analysis of the benefits of the existing pension and the likelihood of being able to replicate these. And the FCA states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, a business should only consider recommending a transfer if it can clearly demonstrate, on contemporary evidence, that the transfer was in a consumer's best interests.

I can't speak for why Firm M (or the other adviser that Mr L says he spoke to but didn't complete paperwork for) declined to provide advice. Nor do I think Aviva is responsible for those businesses' decisions. But with the requirements around advising on the transfer of guaranteed benefits in mind, it is not difficult to believe that businesses might be reluctant to provide advice on a potential transfer, if information about the benefits under the existing scheme was incomplete. Which was the case here as Aviva erroneously in my view, didn't share details of the TFC entitlement and reduced annual income available. As, without this information, it would be difficult for an adviser to evidence that they'd carried out an appropriate analysis.

Mr L has provided evidence to support that he *would* have transferred. He's provided an annuity quotation he was sent by Firm M that said, based on a fund size of £45,700 his options were to take TFC of £11,425 and then either a lifetime annuity paying £1,375.44 (greater than the reduced amount that the existing pension would pay from age 65 although not increasing at 5% per year) or a fixed term annuity that would pay £4,756.83 per year or enter a drawdown pension from which he could take the same amount. So, this suggests he'd have been able to take more TFC and a higher starting pension, on a guaranteed basis if he so chose, in 2019 than the Aviva pension would have paid from the normal retirement date, in 2025. And I can see why, certainly with the benefit of hindsight, he says this means he *would* have transferred if he had all of the relevant information.

I note the quotation was undated, on Firm M headed paper and didn't name the product providers, nor did it say how long the fixed term would be for in respect of that option. But Mr L has separately provided a quote from an annuity provider dated August 2019 for a fixed term annuity using the same transfer value. This said, for a fixed term of 7 years, he could get an annual pension of £4,769.49 after taking TFC. So, this seems to support that the information in the quote from Firm M was broadly based on market conditions at the time Mr L spoke to it. The CETV was in fact higher than £45,700 when Firm M received information from Aviva.

As this indicates after transferring Mr L could have opted to immediately take guaranteed benefits that exceeded those the Aviva pension would pay from age 65 suggests it would have been possible for an adviser to argue that a transfer was financially beneficial. But this is only one of the things that would form part of an adviser's consideration of whether a transfer was in a consumer's best interests. So, I can't say for certain that, even with information about the TFC payable under the Aviva scheme, Firm M or the other business Mr L mentions would have advised him to transfer. And, although he has said he would have still sought to proceed even if advised not to, I don't have enough information to say that either business would have facilitated the transfer for him, against advice not to proceed.

At the same time Firm R, which was an FCA regulated adviser, even without the information from Aviva about TFC, had provided Mr L with advice to transfer. This included taking the maximum available TFC of £11,435. I'm not considering the suitability of that advice here. But ultimately Mr L did not accept this advice. He's said this is because he didn't want to transfer his residual pension to the arrangement that Firm R had suggested. But he didn't go back to Firm R, who it appears was willing to facilitate a transfer, after Firm M (and, he says, another business) told him they would not support a transfer. And I think this is significantly at odds with what he's said - that he would always have sought to transfer.

Mr L has said, because he didn't know the level of TFC that the Aviva pension might pay, he wasn't in a position to make an informed decision. And I can understand that argument. But, as I explained, in March 2019, Aviva sent Mr L a copy of the 'annuity bond' – the original terms from when his pension was set up. This said, in lieu of part of the annuity, Mr L could opt to take a cash sum. But the maximum sum payable was £3,742.18. This is less than the TFC amount that Aviva has now said was always calculable.

Aviva has clarified that the figure quoted in the bond document, from the time the pension was opened, was from before 'pension simplification changes' made in 2006. And the amount it has more recently quoted (£6,767.60) is the correct maximum TFC figure.

Nevertheless, Mr L had a copy of the annuity bond in 2019, indicating that TFC under his pension scheme was capped at £3,742.18. And he had this information when Firm R recommended that he transfer and draw £11,435 in TFC. This indicated that, by remaining in the Aviva pension, the amount he'd be able to draw as a lump sum was always going to be significantly less than he could have obtained in 2019 by transferring. But again, he didn't pursue a transfer in line with Firm R's advice or come back to it when other businesses declined to help.

Where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances. And taking everything into account here, like our Investigator, I don't think I can reasonably say on balance that Mr L *would* have transferred his pension benefits in 2019, if Aviva had said it could provide a figure for the amount of TFC that could be taken at retirement under the policy. The fact that he did not transfer despite having received written advice to do so means I don't think the contemporaneous evidence supports that he would have transferred.

As I've said, I'm satisfied that there were a number of errors across several pieces of correspondence that Aviva sent to Mr L. And I think it acted unfairly by not providing details of the TFC sooner, when it has said it was clearly able to do so. I think this is likely to have caused Mr L significant frustration. And I think it should compensate him for that. Again though, our role isn't to fine or punish a business.

I'm conscious that the error with not providing information about TFC happened more than once – in both 2019 and 2024. And the provision of incorrect information happened multiple times over several months. So, the frustration and upset caused by this continued for some time – which I think is evidenced by the number of times Mr L contacted Aviva to query this. Taking that into account, I agree with our Investigator that a payment of £500 by Aviva, for the distress and inconvenience caused by its errors, would be fair and reasonable in the circumstances.

My final decision

I uphold this complaint. To put things right I require Aviva Life & Pensions UK Limited to pay Mr L £500 in full and final settlement of his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 19 June 2025.

Ben Stoker
Ombudsman