

The complaint

Mr M complains that Aviva Life & Pensions UK Limited (“Aviva”) didn’t treat him fairly when it failed to tell him in 2016 that it was altering the way his pension savings were invested following him reaching the selected retirement date set on his pension plan.

What happened

I have issued two provisional decisions on this complaint, in October and December 2024. In those decisions I explained why I thought the complaint should be upheld and what Aviva needed to do in order to put things right. Both parties have received a copy of the provisional decisions but, for completeness, I include some extracts from them below.

In my first provisional decision I said;

Mr M held pension savings with Aviva. Those savings had arisen from a plan Mr M took out in 1989 with another firm. But responsibility for that plan subsequently moved to Aviva although the basic details of the plan remained unchanged. The plan was invested in a with-profits fund and held a selected retirement date of Mr M’s 60th birthday in March 2016.

In the lead up to March 2016 Aviva wrote to Mr M on two occasions, although he says that those letters weren’t received. The letters reminded Mr M that the selected retirement date was approaching and suggested he might want to consider how he would use his pension savings in the future to provide for his retirement. The letters asked Mr M to get in touch with Aviva if he wasn’t ready to take his pension benefits at that time. But they explained that Mr M wasn’t required to take his benefits until he reached age 75.

When Mr M reached his selected retirement age Aviva moved his pension savings into a cash-based fund. But it says that since Mr M’s pension savings were not considered to be actively invested it stopped sending him information about them. That remained the case until December 2023 when Aviva altered its policy and began to again communicate with consumers in a similar position to Mr M.

Mr M complained to Aviva about what had happened. Aviva told him that it had correctly followed its processes in 2016 and that it was Mr M’s responsibility to keep track of his pension savings. But it thought that it could have communicated the changes to Mr M a bit sooner. So, as a gesture of goodwill it offered £200 compensation to Mr M. Unhappy with that response Mr M brought his complaint to us.

Shortly after that Mr M decided to move his pension savings to another firm. It seems there were some problems with the timeliness of that transfer. And Aviva offered Mr M some further compensation as a result. But those are not matters that I will be dealing with in this decision. Here I will only consider what happened in 2016 when Mr M’s pension savings were disinvested.

There seems to be little dispute about the basic facts of this complaint. Mr M held pension savings with Aviva in a plan that had a selected retirement date of March 2016. When Mr M didn't take his benefits at that time Aviva changed the way in which they were invested. But since it then considered that Mr M was not actively invested it suspended routine communication with him. So that meant Mr M wasn't told about the investment change or sent any annual statements that would have alerted him to the change.

Aviva has told us that it wrote to Mr M twice in the lead up to his selected retirement date. Mr M has said those letters weren't received. The letters appear to have been correctly addressed and sent to Mr M's home. So I cannot reasonably conclude that Aviva should be held responsible if they didn't reach Mr M. But in saying that I have no reason to doubt what Mr M says either. So I cannot reasonably conclude that he should take any blame for not discussing his pension savings with Aviva as the letter suggested he should if he was delaying taking his pension benefits.

Since Aviva has offered compensation to Mr M on the basis recommended by our investigator it seems that it accepts his findings that it didn't treat Mr M fairly when it disinvested his pension savings. I share the conclusions reached by the investigator. The changes Aviva made to Mr M's pension investments were significant. And whilst it could be argued they were in the short-term interest of Mr M, if he was intending to put his pension benefits into payment at that time, they had a significant detrimental long-term impact. Aviva's policy of suspending communication following those changes was, in the circumstances here, unfair.

So what I need to decide in this decision is what Aviva should do in order to put things right. And, as I set out above, my basis for doing that would be to look at what would have happened if nothing had gone wrong. In this case I think that would mean deciding what action Mr M would have taken had Aviva told him that it had changed, or would be changing, the way in which his pension savings were invested.

It seems very unlikely that Mr M wouldn't have reinvested his pension savings given that he doesn't appear to have wanted to make use of them at that time. Our investigator concluded that he couldn't be sure how Mr M's pension savings would have been reinvested so applied our normal approach when such uncertainty exists – he said Aviva should use an industry benchmark to estimate the growth Mr M's pension savings might have achieved.

In itself I don't think that is an unreasonable approach. But given what we know of Mr M's circumstances I think other approaches might give a fairer outcome here. So I've considered the two alternative approaches that Mr M has suggested might be more appropriate.

Mr M has said that he had other savings, such as ISAs, that were invested by a financial advisor on his behalf. He has shown us the growth that those savings have achieved since 2016. But I'm not persuaded using that growth would give a fair outcome here.

Although some of the information I've been given isn't clearly dated, it doesn't seem that Mr M engaged his current financial advisor until early 2017. So that would have been nearly a year after his pension savings were disinvested. So I don't think that he would have adopted that investment approach in March 2016. I accept it is possible that, as part of any review Mr M's new financial advisor undertook in 2017 changes might have been made to his pension investments. But on balance I think that is too speculative to use as a basis for compensation here.

But I do find the other approach suggested by Mr M to be appropriate. Mr M appears to have been content for his pension savings to be invested in the with-profits fund over an extended period of time. I haven't seen anything that would make me think that, in 2016, he had any concerns that fund had become inappropriate for his circumstances. In fact it seems that it was Mr M's belief that his pension savings had remained invested in that way. So I think it likely that, if he had been told before the change had been made, Mr M would have asked Aviva to leave his pension investments unchanged. And if the notification was given to Mr M after the investment change, I think it likely he would have added his funds back into the with-profits arrangement.

So I think that a fair way of assessing the lost investment growth that Mr M has suffered is to compare what his pension savings would have been worth had no investment changes been made in 2016. So I intend to direct Aviva to undertake that comparison and pay compensation to Mr M equal to the lost growth.

I have seen that Mr M transferred his pension savings to a new provider in March 2024. In response to this provisional decision I ask that Mr M provides me with more information about whether those pension savings have been reinvested, or encashed, since that time so I can ask Aviva to pay some additional compensation to reflect the lost growth on the compensation between March 2024 and any settlement date.

It is clear that this whole matter will have caused some distress and inconvenience to Mr M. So I will additionally ask Aviva to pay Mr M £200 compensation for that inconvenience.

After receiving responses from both parties I issued a second provisional decision. In that decision I said;

I think that my first provisional decision, and the responses I have received, have established the reasons why this complaint should be upheld. I don't think Aviva did enough in 2016 to make Mr M aware that it had changed his pension investments. And I think the lack of subsequent reporting on those investments meant that Mr M was denied an opportunity to alter his investments to better match his circumstances and attitude to risk. So what is left for me to decide on this complaint is how things should be put right.

Since I have received Aviva's response to my first provisional decision I have had extensive email correspondence with the firm in an attempt to establish the options that would have been available to Mr M at that time. I have told Aviva that I have been disappointed with what I consider to be a lack of information in some of those responses. But I don't know whether that lack of information is because the details of what would have happened at the time are no longer available, or whether it is because that information is being deliberately withheld. But, in either case, it doesn't assist me in reaching a conclusion about what Mr M would have been likely to do, had Aviva's communications been better in 2016.

In the letter that was sent to Mr M in September 2015 Aviva said the following;

Want to leave your money where it is for the present?

If you're not ready to take your benefits yet, please call and let us know. We can explain what delaying your benefits means to you.

I have unsuccessfully asked Aviva for information about what Mr M would have been told had he made that call. But, as I've noted in my provisional decision, Mr M says that letter wasn't received. And since I don't think any failure to deliver that letter was because of something Aviva did wrong I accept it might be unreasonable to conclude that Mr M would have been able to take actions before the disinvestment of his pension savings.

But I do think that Mr M would certainly have taken actions after his pension savings had been disinvested. As I've previously set out he didn't intend to make any use of them at that time, so he would have been keen to ensure they were invested in line with his objectives and his attitude to risk.

Aviva has told us that Mr M wouldn't have been allowed to return to the with-profits fund. In the absence of better information from the time I have little choice but to take that statement at face value. I agree with Mr M that it does seem rather strange since the with-profits fund has actively continued since that date. And since as part of its rectification activities Aviva added Mr M's pension savings back into the with-profits fund in December 2023. But I have no grounds to dispute what Aviva has said, and so I must change the redress I set out in my first provisional decision.

Mr M's pension savings were disinvested in March 2016. I think he would have taken steps as soon as he was told about that change to reinvest them into more suitable funds. Mr M took financial advice in relation to some ISA investments that he held in March 2017. That advice followed an extensive examination of Mr M's attitude to risk. I haven't seen anything to make me think that Mr M would have had a materially different attitude to risk in relation to his pension savings in 2016 to that the financial advisor measured in relation to the ISA investments the following year.

Mr M has said that he was unaware of the disinvestment of his pension savings. I think that is a reasonable assertion given Aviva's failure to communicate the disinvestment to him. And I think that, had Mr M been aware of the disinvestment, and particularly that he couldn't return the funds to the with-profits fund, he would have had earlier discussions with his financial advisor about his pension savings. Those discussions would have taken a short time so I think, from a point three months after the disinvestment, it would be reasonable to conclude that Mr M would have altered the investment of his pension savings. I think it fair to decide he would have most likely used the same approach as he later took with his ISA investments.

So in this second provisional decision I am amending the way in which I am asking Aviva to calculate the redress due to Mr M to reflect the investment returns Mr M enjoyed on the model portfolio he used for his ISA investments from June 2016. Those performance figures can be provided by Mr M's financial advisor, and I would ask Mr M to make them available to Aviva when any compensation is being calculated.

Mr M has confirmed that his pension investments have now been encashed. So I think it appropriate that any compensation be paid directly to him, rather than being added to a pension plan. And, as I set out before, it is clear that this whole matter will have caused some distress and inconvenience to Mr M. So I will additionally ask Aviva to pay Mr M £200 compensation for that inconvenience.

I again invited both parties to provide us with any further comments or evidence in response to my provisional decision. Although I am only summarising here what has been said, I want to reassure both Mr M and Aviva that I have read, and carefully considered, everything they have said.

Mr M provided a summary, produced by his financial advisor, of the performance of his ISA investments. We shared that information with Aviva. Aviva has said that it doesn't agree with my second provisional decision.

Aviva says that the terms and conditions of Mr M's pension product clearly set out what would happen if it continued past its maturity date. So it says that its offer of compensation is not because it moved Mr M's investments, but because it didn't keep him sufficiently informed about what was happening with his investments. It says it wasn't wrong to defer the monies in line with the terms and conditions.

But, as a gesture of goodwill, Aviva says that it is willing to pay compensation to Mr M on the basis that his pension savings would have remained invested in its with-profits fund. It says the value of that compensation would be approximately £32,000.

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.

As I set out in my provisional decisions, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr M and by Aviva. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

In response to my second provisional decision Aviva has made a goodwill offer to Mr M. The compensation it has offered is in line with what I asked it to pay in my first provisional decision. But it is not right that the compensation I direct is purely on the grounds of the financial cost. As I have explained, the compensation I will direct Aviva to pay is intended to place Mr M back into the position he would have been had nothing gone wrong.

In response to my first provisional decision Aviva argued at length that it would not have been possible for Mr M to remain in the with-profits fund past his normal retirement date. As I said in my second provisional decision I have no reason to dispute what Aviva says in that regard. So it would not be appropriate for me to direct Mr M be paid compensation on the basis of what would have happened had he remained in the with-profits fund.

Throughout each of my provisional decisions I have very clearly set out that I do not find any fault on the part of Aviva in moving Mr M's pension savings from the with-profits fund when he passed his selected retirement date. The fault I have found, and Aviva appears to admit, is that it didn't adequately communicate with Mr M after that change had happened, either by providing confirmation immediately afterwards or for six years afterwards.

There seems little doubt, as Aviva agrees, that Mr M was happy with the investments he held in the with-profits fund. But following Aviva's confirmation that investment was no longer available to Mr M once he passed his retirement date, I think if he had received better information about the change he would have taken steps to move his pension savings into an investment more suitable for his attitude to risk and future circumstances.

So I remain persuaded that Mr M would have been likely to invest his pension savings, from a date three months after his selected retirement date, in the same way as he later invested his ISA monies. Mr M's financial advisor has provided Aviva with the growth the pension savings would have achieved if they had been invested in that way and I think it fair that should form the basis of the compensation Aviva now pays to Mr M.

It is disappointing that, some two months after it rejected my compensation proposals in the first provisional decision, Aviva has now made that exact offer to Mr M as a gesture of goodwill. I would hope the offer has not been made on the basis of financial benefit to the firm since it appears the compensation I set out in the second provisional decision will be greater.

Mr M has confirmed that his pension investments have now been encashed. So I think it appropriate that any compensation be paid directly to him, rather than being added to a pension plan. And, as I set out before, it is clear that this whole matter will have caused some distress and inconvenience to Mr M. So I will additionally ask Aviva to pay Mr M £200 compensation for that inconvenience. For the avoidance of doubt that compensation, for Mr M's inconvenience, is in addition to any compensation of that nature Aviva has already paid to him.

Putting things right

In order to put things right, Aviva should do the following;

- Using the information supplied by Mr M's financial advisor, calculate the difference between the value of Mr M's pension savings transferred to the new provider, and what they would have been worth had they been invested using the model portfolio applied to his ISA savings from 6 June 2016 until the transfer liability date of 6 March 2024. It should pay Mr M compensation equal to any difference in value calculated above.
- Given that Mr M encashed his pension savings shortly after the transfer he has been deprived of the use of this additional money. So Aviva should add simple interest at a rate of 8% per annum to the calculated compensation from the date of transfer to the date of settlement.
- Aviva should additionally pay a further to Mr M £200 for the inconvenience he has been caused.

As I have said above Mr M has now encashed his pension savings so it would be unreasonable for Aviva to pay the total compensation into Mr M's pension plan. It should therefore pay that amount direct to him. But had it been possible to pay into a plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr M won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr M's expected marginal rate of tax when he would have taken those benefits had nothing gone wrong. I think it reasonable to

assume that Mr M would be likely to have managed his income and withdrawals so they would have attracted basic rate tax at that time. So the reduction should equal the current basic rate of tax. However, as Mr M would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

My final decision

My final decision is that I uphold Mr M's complaint and direct Aviva Life & Pensions UK Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 13 February 2025.

Paul Reilly
Ombudsman