DRN-5319035

The complaint

Mr and Mrs R complain that Aviva Administration Limited terminated their client agreement when they did not consent to the agreement being transferred to a third party which intended to charge significantly higher fees. Mr and Mrs R also complain that Aviva Administration Limited failed to complete an annual review in 2023 despite the fact they had paid for this service.

What happened

Mr and Mrs R had client agreements with Aviva.

Mr R first entered into the agreement in or about October 2021. He signed a second agreement in December 2023 and a third agreement in May 2023. Mrs R entered into the agreement in or about May 2023. By virtue of these agreements Mr and Mrs R agreed that Aviva should provide its financial advice service to them. This included an annual review service. The relevant fees were set out in the agreements.

Mr and Mrs R transferred their defined contribution pension plans to Aviva in May 2022 and June 2022 (respectively). Aviva provided advice regarding this and charged Mr and Mrs R an initial advice fee. Mr and Mrs R say that they anticipated that the initial advice fee would be worthwhile over the lifetime of their relationship with Aviva. They agreed that Aviva should provide ongoing financial advice and agreed the fee that would apply.

In April 2023 Aviva contacted Mr and Mrs R concerning the annual review. A meeting was agreed for July 2023 but this was cancelled by mutual agreement due to medical tests which Mr R needed to take.

On 15 August 2023 Aviva wrote to Mr and Mrs R. The letter was signed by the financial adviser who was responsible for providing financial advice to them. He informed them that Aviva intended to transfer its financial advice business to a third party (which I'll refer to as 'S') and that he would become employed by S - but would still be available to support Mr and Mrs R.

The letter stated that if Mr and Mrs R wanted to continue to receive advice they would need to sign and return the "transfer consent form" enclosed with the letter, by 15 September 2023. This consent would enable Aviva to share information with S.

The adviser said he would contact Mr and Mrs R to arrange the next annual planning meeting and at that meeting he would take them through S's Terms of Business and they would be asked to sign S's Letter of Engagement. If they did not want S to support their financial planning needs in the future, their agreement with Aviva would be terminated on 1 October 2023.

Aviva also stated that customers would not be able to access its Personal Financial Portal and they should download any documents they wished to retain by 1 October 2023. This applied whether the agreement was transferred to S or not.

Mr R contacted the financial adviser on 24 August 2023. He asked for clarity about the fees that would apply if their agreements were transferred to S. He said it appeared to him that the annual fees would increase from £2,200 to around £6,500 initially and then to £8,000. He thought this was unacceptable. The adviser said that if Mr and Mrs R wanted him to complete their annual review (for 2023) they would need to sign the consent form. This wouldn't create any commitment for them to transfer their agreements to S and there would be no change to the fee for the annual review.

Mr and Mrs R didn't want to sign the consent form because they were concerned that it meant they would be subject to S's terms of business. The annual review was not completed and their agreement with Aviva terminated on 1 October 2023.

Mr and Mrs R complained to Aviva about what had happened. They also complained about the fact that they could no longer access all of their documents on Aviva's portal. Aviva investigated their complaint. It said it had given more than 30 days' notice that it would terminate the annual review service. It had also given notice about the changes to the portal. This was in line with its terms of business which required it to give at least 30 days' notice.

Aviva said it hadn't made any errors. This was a business decision. Mr and Mrs R could still access their pension through Aviva direct. If they wanted to move their agreement to S, they could still do so but they would have to pay an initial advice fee if they did that.

Mr and Mrs R were dissatisfied with Aviva's response. They said they'd not been given enough information about what it meant to be an Aviva direct client. They had not had any discussion to help them decide whether they should transfer to S and it wasn't fair that they should have to pay an initial advice fee if they did now transfer to S. They referred their complaint to our service.

Our investigator looked into their complaint. He initially thought that Aviva needed to do more to resolve the complaint. Although it hadn't done anything wrong when it terminated the service, and although it had tried to treat Mr and Mrs R fairly during the change process, he thought Aviva should arrange to complete the annual review (for 2023) at no extra cost to Mr and Mrs R.

Mr and Mrs R agreed with what our investigator said. Aviva disagreed. It pointed out that the annual review process had commenced in April/May 2023 and the annual advice report had been sent to Mr and Mrs R in June 2023. Aviva had offered to complete the annual review process but Mr and Mrs R had been unwilling to sign the consent form even though Aviva had explained that by signing the form they would not be committing to S's terms of business. Aviva reiterated it had given fair notice that it intended to terminate the annual review service.

Our investigator considered what Aviva said. He changed his view. He said Aviva hadn't done anything wrong when it ended the service and had acted fairly during the change process. It had sent the review in June 2023 and had kept in touch subsequently. Our investigator thought Aviva had done everything it reasonably could have done to explain what was required if the annual review was to be completed.

Mr and Mrs R did not agree. They said that the advice report sent in June needed to be revised since it contained outdated assumptions specifically about Mr R's health and also about the ongoing fees that would apply. A meaningful review had not been completed.

Because Mr and Mrs R didn't agree, the complaint was passed to me to decide. I issued a provisional decision in which I said:

What I've provisionally 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.

Was Aviva able to terminate the annual review service?

I've looked at the terms of the agreements which Mr and Mrs R signed with Aviva. Under the heading "Annual Review Service" Aviva set out what the service included. This stated that the following services were included:

- *A report on product performance and suitability;*
- *Named dedicated adviser;*
- *A discussion to review personal circumstances and plans put in place to make sure they continue to meet [your] needs and goals;*
- *Annual rebalancing of investment products;*
- *Recommendations and implementation of appropriate changes to [your] plan(s) product(s) or fund(s); and*
- *"Bed and ISA" activity for funds.*

The annual fee was paid monthly in advance.

The agreement further provided that Mr and Mrs R could cancel the annual review service – but there would be no refund for any payments made before the annual review service was cancelled. Aviva could also cancel the financial advice service by providing at least 30 days' notice.

Having read the terms, I'm satisfied, on balance, Aviva didn't do anything wrong when, in line with the terms, it wrote to Mr and Mrs R on 15 August 2023 and informed them about its decision to terminate the annual review service on 1 October 2023.

Did the notice of termination sent to Mr and Mrs R contain enough information about the proposed changes?

I've looked at the letters sent to Mr and Mrs R in August 2023.

Letter dated 2 August 2023

In this letter Aviva explained that the Aviva Financial Advice (AFA) business would transfer to S on 1 October 2023. Their adviser would not change as a result of the transfer but after the transfer the adviser would work for S. The questions and answers included with the letter provided further detail:

- *Their policies would remain with Aviva. At the next annual review, the ongoing suitability of the plans and investments would be discussed. S had a wider range of solutions available and the adviser would assess whether any changes were recommended.*
- *Their adviser charge would continue to be that which was agreed at their last review meeting. At the next annual review the adviser charge, going forward, would be discussed.*

Letter dated 15 August 2023.

This letter included the following points:

- *The AFA business was being transferred to S on 1 October 2023. After that date AFA would become the trading style of S.*
- *Mr and Mrs R's policies and investments would remain unchanged - but their adviser would be employed by S.*
- *If Mr and Mrs R wanted to continue to receive financial advice from AFA they needed to sign a consent form so that their information could be shared with S.*
- *They could no longer access the "Personal Financial Portal" after 1 October 2023 and if they wanted to continue to access any documents on that portal they needed to download them before that date.*
- *If they didn't want to continue to receive advice from AFA or if they didn't respond to the letter their agreement with AFA would be terminated. That meant they "would not be offered an annual review to assess the suitability of [their] financial plans and [they would] be solely responsible for monitoring the progress of [their] financial plans.. [They would] also not receive Adviser support in making any future amendments to [their] plans…"*
- *If they had any further questions they could contact their adviser.*

The letter did not set out what the terms of business or the new charging structure would be if they did transfer to S. It stated that this would be discussed at the next annual planning meeting. And, as Mr and Mrs R have argued, the letter did not provide details about what arrangements would be put in place if they chose to accept sole responsibility for monitoring the progress of their plans – in circumstances where they didn't want to transfer to S.

However, it is the case that Mr and Mrs R did contact the adviser and he did explain to them what the fee charging structure would be if they chose to transfer to S. Mr and Mrs R did not find the new charging structure attractive, mainly because it was a significant increase in charges.

I've also noted that the adviser did provide further information about how Mr and Mrs R could monitor the progress of their plans in the event that they did not agree to the transfer to S. They could transfer to another provider if they wished – they would have to contact the new provider to arrange that. Alternatively they could transfer to the Aviva 'direct to consumer' platform. If they did that he thought it was likely the funds he had recommended could continue to be available but he confirmed it didn't offer the phased drawdown approach he had recommended.

In his email dated 15 September 2023, the adviser explained that in terms of support (if they did not agree to the transfer to S) Mr and Mrs R could continue to undertake transactions by contacting the Aviva Platform Support Team directly. Details of the contact details for that team were included on statements and other correspondence.

Having looked at the letters sent to Mr and Mrs R, and the follow up email correspondence with the adviser, I'm satisfied on balance Aviva did provide enough information about the proposed changes to enable Mr and Mrs R to make informed decisions about what they needed to do if their agreement terminated on 1 October 2023.

<u>Was Aviva obliged to complete the annual review process?</u>

The annual review process for Mr and Mrs R was due to have been completed in July 2023. The adviser had sent a draft report to Mr and Mrs R dated June 2023. However, due to various circumstances, outside the control of either party, it had not been possible to complete that process. The next (and final stage) would've been a meeting with the adviser to discuss and agree the report.

In the period after June 2023 circumstances changed. Mr R had undergone various medical tests and he had the results of those tests. And AFA announced its intention to transfer its business to S.

I'm satisfied, on balance, it would've been necessary to have a meeting to complete the annual review process. I say that mainly because it was always intended that a meeting should take place. But also because I'm persuaded it would've been necessary to discuss what impact (if any) the results of the medical tests would make to Mr and Mrs R's ongoing financial plans.

The adviser did explain to Mr and Mrs R that he could conclude the annual review but this would require them to sign the consent form. The reason for that was because after 1 October 2023, he would be an employee of S and he needed them to agree that their personal information could be shared with S. If they didn't sign the consent form the annual review could not be completed after 1 October 2023. The adviser confirmed that the annual review could be completed without incurring any additional charges, if they signed the consent form. And the increased charges would only apply if they wanted to continue with the ongoing advice service after the move to S.

Although I'm satisfied, on balance, the adviser set out the position clearly to Mr and Mrs R, it is the case that completion of the annual review did require them to sign the consent form. And it is also the case that would've meant their annual review would have been completed as clients of S – since their agreement with Aviva terminated on 1 October 2023.

Mr and Mrs R didn't want to transfer their agreement to S and didn't want to sign the consent form. That was their choice. And although it was fair and reasonable, for the reasons set out above, that Aviva should have terminated their agreement, I don't think it was fair and reasonable in these circumstances for Aviva not to refund the fees it had collected (in advance) for the annual review service.

Aviva has sought to argue that it did provide some elements of its Annual Review Service. However, I'm not persuaded, on balance, that the core elements of the service, which Mr and Mrs R would reasonably have expected it to deliver, have been provided. So, I've provisionally decided that Aviva should refund all of the fees it collected for the annual review service up to the date of termination.

Mr and Mrs R have also indicated that to get an ongoing advice service, they will now need to start again – and either pay an initial advice fee to S or another provider. They think Aviva should be required to refund the initial advice fees they paid it.

I've thought about what Mr and Mrs R have said here, but I'm not persuaded that Aviva should be required to refund their initial advice fees. They were provided with the initial advice service and although they were disappointed that Aviva chose to transfer its AFA business to S, that was something Aviva was entitled to do. As I said above, it didn't do anything wrong when it sent them notice of its intention to terminate their agreements if they didn't want to transfer to S.

Because their agreements with Aviva have been terminated they will now have to consider whether they want to continue to get an ongoing advice service and that will mean they need to discuss and agree further initial advice fees with a new provider. However, I don't think it's fair or reasonable to hold Aviva responsible for paying any initial advice fees they might incur if Mr and Mrs R want to get an ongoing advice service in the future.

Distress and Inconvenience

I've also thought about the distress and inconvenience Mr and Mrs R have experienced as a result of what's happened. It is the case that they've been inconvenienced as a result of Aviva's decision. However, I'm not persuaded that Aviva treated them unfairly or unreasonably in terms of the information it provided to them during the change process. Nevertheless the annual review process was not completed and Mr and Mrs R did have to actively seek more information about how they could continue to monitor their investments after their agreement was terminated. So, I think they did experience some distress and inconvenience. Having considered everything, including our guidelines for awards of this nature, I've provisionally decided that Aviva should pay Mr and Mrs R £100 for distress and inconvenience.

My provisional decision

For the reasons given above my provisional decision is that I intend to uphold this complaint, in part, about Aviva Administration Limited.

I intend to require Aviva Administration Limited to take the actions I've set out below to resolve this complaint:

- *Refund all of the fees which Mr and Mrs R have paid to Aviva Administration Limited for its annual review service; and*
- *Pay Mr and Mrs R £100 for distress and inconvenience*.

Aviva responded to my provisional decision. By way of summary it said:

- A review discussion had taken place on 12 May 2023. Aviva subsequently advised us that this meeting was on 12 April 2023 and added to their notes on 15 May 2023. It said the meeting was a fact find to discuss Mr and Mrs R's circumstances.
- A report was completed on 15 June 2023 and sent to Mr and Mrs R on 3 July 2023. This was not a draft report. The review was full and final and accurate at the time of completion. Aviva thought it had fulfilled its obligation to provide an annual review.
- The purpose of a meeting after the review had been produced was to "present" the review to the client and was mainly to gain acceptance of the actions going forward.
- It had not offered a continuous review service.
- Aviva had offered to revisit the final review in October, subject to Mr and Mrs R signing the consent form. It had gone above and beyond what it was required to do.
- A meeting was not necessary to complete the annual review process.

Mr and Mrs R also responded to my provisional decision. By way of summary they said:

- Their understanding of the annual review was that it was more than a fact finding exercise and production of a report. They needed to be able to discuss the report and any changes they might want to make with the advisor. That had not occurred.
- Aviva's management of the transition to S had been poor. It had not clearly explained the change and hadn't been flexible to accommodate health circumstances.

- They wondered if the proposed compensation was adequate given everything that had happened and the length of time it had taken.

So, I now need to make my 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 haven't received any new or additional information that causes me to change my views as set out in my provisional decision under the headings:

> *Was Aviva able to terminate the annual review service? and*
>
> *Did the notice of termination sent to Mr and Mrs R contain enough information about the proposed changes?*

Both parties have however commented on what I've said under the other headings in my provisional decision and in particular concerning the annual review service that was provided here. Aviva argues that it completed the annual review when it issued the document dated 15 June 2023. It says that document was in final form and any meeting after that date was simply to present the review to Mr and Mrs R.

Mr and Mrs R say their expectation was that there would be a meeting to discuss the report – they saw that meeting as an essential part of the annual review service they'd signed up for.

I've thought again about what both parties have said. Aviva says the report dated 15 June 2023 was in final form and reflected discussions that had taken place in April. I asked Aviva for more details about this meeting which it said took place via "Teams." It says it was a fact finding meeting and the changes to Mr and Mrs R's circumstances are reflected in the report dated 15 June.

I've looked at the notes recorded at the time and these lack any detail – just recording that a fact find was completed on 12 April and that the note was placed on the file on 15 May. The system note stated:

> *Note Created By:{XXX} (15/05/2023 11:32)*
>
> *Fact find 12/04 with [Mr R and Mrs R].*
>
> *SCDDd* send to each of them via docusign 15/05*

[*SCDD refers to the services and costs disclosure document]

There are no hand-written notes or other contemporaneous notes about what was discussed at the meeting. There's no indication that any advice was discussed at the meeting or that there was any review of the performance of their pensions. There's also no indication how long the meeting lasted.

I can see that at the start of the report dated 15 June 2023, there is a section which includes five bullet points setting out Mr and Mrs R's "current situation and objectives." This includes a reference to some changes in medical health and some changes to financial

circumstances. So, I'm satisfied on balance that a meeting did take place and that there was some discussion about Mr and Mrs R's current circumstances. I can also see that there's a reference in the 15 June report to a further risk questionnaire having been completed by Mrs R. I haven't seen a copy of the questionnaire and there's no reference to it in the notes on Aviva's systems.

Following the meeting on 12 April 2023 the report was prepared and uploaded to the Aviva portal on 15 June 2023. Aviva says that marked the end of the annual review process. Aviva says this report was in final form – it was not a draft.

I've thought carefully about what both parties have said here but I haven't changed my view that the annual review process required a final meeting in order to be concluded. I say that mainly for the following reasons:

- The description of the Annual review service which Mr and Mrs R signed up for included:

    - A report on product performance and suitability;
    - Named dedicated adviser;
    - A discussion to review personal circumstances and plans put in place to make sure they continue to meet [your] needs and goals;
    - Annual rebalancing of investment products;
    - Recommendations and implementation of appropriate changes to [your] plan(s) product(s) or fund(s); and
    - "Bed and ISA" activity for funds.

    As I've mentioned above I'm not persuaded that the meeting on 12 April 2023 was a discussion of the type set out in the third bullet point above. There are very sparse details about what was discussed. The meeting itself was recorded simply as a fact find. And although there was a recommendation report dated 15 June 2023, there was no subsequent discussion to make sure (my underlining added for emphasis) that any plans put in place (or recommendations made) continued to meet Mr and Mrs R's needs and goals.
- Aviva's adviser himself stated on several occasions that the purpose of the meeting, following the 15 June 2023 report, was to discuss his conclusions and to "conclude" the review. He specifically uses that language in an email dated 1 September 2023.
- Even prior to the 15 June 2023 report being issued Aviva's advisor contacted Mr and Mrs R and explained that he wanted to arrange a meeting to discuss his conclusions with them. He said this meeting would take around 1 hour. So, I'm satisfied, on balance, Aviva itself viewed the meeting as an essential part of the annual review process which would be more than a mere presentation of its findings.

    There was going to be an active discussion that could take around 1 hour. I think that points to the fact it was envisaged that this meeting would be a meaningful two way discussion of the type set out above in the description of the annual review process – not just a presentation. And, I'm also satisfied that following the proposed meeting to discuss the conclusions in the report dated 15 June 2023, changes may have been required. So although Aviva says that report was in final form, I'm persuaded that following any meaningful discussion with Mr and Mrs R changes may have been made to the report and recommendations.
- Mr and Mrs R's expectation was that there'd be a meeting to discuss the recommendations. The fact finding meeting had not been an annual review meeting as far as they were concerned. It was merely a meeting to inform Aviva about any change in circumstances. And, as they've confirmed, they believed that a meeting to

discuss Aviva's updated advice was a core part of the annual review service that they had been paying for. I think that was a fair and reasonable belief on their part.

As I said in my provisional decision Aviva explained to Mr and Mrs R that completion of the annual review could take place – but only if they signed the consent form. That would've meant their annual review would have been completed as clients of S – since their agreement with Aviva terminated on 1 October 2023. Mr and Mrs R didn't want to transfer their agreement to S and didn't want to sign the consent form. That was their choice. But in these circumstances , I remain of the view that it's fair and reasonable to require Aviva to refund the fees it had collected (in advance) for the annual review service up to the date of termination of the service.

I've also thought again about the amount of compensation Aviva should pay Mr and Mrs R for the distress and inconvenience they experienced here.

Mr and Mrs R say that they wonder if the compensation is sufficient. They refer to the fact that Aviva's sole justification for what happened was that it was a business decision and it was acting within the terms and conditions. They also don't think Aviva has considered their needs through the lengthy complaints process.

In my provisional decision I set out why I thought Aviva hadn't done anything wrong when, in line with the terms and conditions, it terminated the service. I've not changed my view about that. I also explained the factors that I'd taken into account when reaching my view that Aviva should pay them £100 by way of compensation for the distress and inconvenience they'd experienced when they had to actively seek more information about how they could continue to monitor their investments after the agreement ended. I thought they'd experienced some distress and inconvenience.

Having thought about everything again, including our guidelines for awards for distress and inconvenience, I've not changed my view that it's fair and reasonable to require Aviva to pay Mr and Mrs R £100 by way of compensation for distress and inconvenience.

My final decision

For the reasons given above, I uphold this complaint, in part, about Aviva Administration Limited.

I require Aviva Administration Limited to take the actions I've set out below to resolve this complaint:

- Refund all of the fees which Mr and Mrs R have paid to Aviva Administration Limited for its annual review service; and
- Pay Mr and Mrs R £100 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R and Mr R to accept or reject my decision before 23 April 2025.

Irene Martin
Ombudsman