

The complaint

Mr R complains that Aviva Life & Pensions UK Limited (“Aviva”) will not allow him to take his pension benefits in the form of drawdown or transfer them to another provider. And he also complains that Aviva incorrectly sent some personal information about him and his wife to another policyholder.

What happened

Mr R holds pension savings with Aviva in a Section 32 plan. Those pension savings arose from the transfer of some pension benefits Mr R had accrued in an occupational pension scheme provided by a former employer who made Mr R redundant in 1990. The transfer was of benefits designed to pay Mr R a Guaranteed Minimum Pension (“GMP”) as a result of his previous employer contracting him out of the State Earnings Related Pension Scheme.

So Aviva holds a responsibility to ensure that it provides Mr R with a pension of a specified amount (based on the original GMP plus increases for inflation over the intervening years) at state retirement age. As Mr R has now passed that age, without having taken his pension benefits, Aviva is also required to increase the GMP each year in accordance with legislative requirements.

The pension savings that Mr R holds with Aviva are insufficient to fund the purchase of an annuity equal to the amount of the GMP Aviva must pay. So Aviva would be required to enhance Mr R’s pension savings to allow that annuity to be paid. But the requirements on Aviva only relate to the payment of the specific GMP annuity. Aviva has told Mr R that it would be unable to allow him to transfer his pension benefits to another provider unless that provider is willing to take on the GMP liabilities.

In September 2024 Mr R requested a statement of his pension benefits from Aviva. At that time Aviva made what it called a copy and paste error meaning that Mr R was sent some information about another of its customers. And it seems that some information about Mr R and his wife was used to calculate benefits that might be paid to the other customer.

Aviva apologised for the error it had made with Mr R’s personal information. It paid him £400 for the inconvenience he’d been caused. But it told Mr R that unless his pension savings were valued at more than the cost of the GMP it wouldn’t be able to allow him to transfer them to another provider. Unhappy with that response Mr R brought his complaint to us.

Mr R’s complaint has been assessed by one of our investigators. She thought that Aviva had correctly interpreted its responsibilities in relation to the payment of the GMP, and whether Mr R should be allowed to transfer his pension savings to another provider. But she thought Aviva could have done more to better explain the process and reasons to Mr R. So she asked Aviva to pay a further sum of £100 to Mr R for that inconvenience. The investigator thought that the compensation Aviva had already paid to Mr R in relation to the data breach was fair and reasonable.

Mr R didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr R accepts my decision it is legally binding on both parties.

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.

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 R 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.

At the outset I think it is useful to reflect 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.

Mr R's pension plan was opened in 1991 to receive the benefits he'd accrued whilst working for his previous employer. At that time pension legislation was very different to what we now see, and in most cases consumers would use their pension savings to purchase an annuity when they retired. So the pension plans that were sold at that time were designed with that expectation. Mr R's plan would expect him to use his pension benefits to purchase an annuity.

The nature of Mr R's pension plan also provides him with a valuable guarantee. Aviva is responsible for ensuring that the annuity it pays to Mr R is of a minimum value. Of course, if Mr R's pension investments had performed better than expected, any surplus could be used to purchase additional benefits. But, as is the case here, if their value is less than would have been expected when the plan was taken out, Aviva is responsible for making good any shortfall in the annuity Mr R could purchase.

Paying the GMP must be the primary focus of Aviva's responsibilities to Mr R. It wouldn't generally be appropriate for it to facilitate a transfer of Mr R's pension benefits that would result in him losing that valuable guarantee. So should any transfer be agreed, Aviva has told Mr R that it must be on the basis that the new provider also commits to paying the GMP that he is entitled to receive.

It is unlikely that another provider will take on that responsibility given that the value of Mr R's pension savings are currently insufficient to meet the cost of providing the GMP. So, currently, in order to access his pension benefits Mr R would need to ask Aviva to provide him with the GMP that he is entitled to receive. And to do that Aviva would need to enhance the value of Mr R's pension savings.

I can understand why that is so disappointing for Mr R. His circumstances are such that he doesn't currently need the income that an annuity would provide. Instead he says he would rather take a pension commencement lump sum (more generally known as tax-free cash) and leave the remainder of his pension savings invested so he could choose to use them in the future. But I'm sorry to tell Mr R that Aviva is not able to make a transfer of that nature – doing so would deprive Mr R of a guaranteed benefit and place Aviva outside its regulatory responsibilities.

But I agree with our investigator that Aviva's explanations to Mr R could have been better. I appreciate that it is likely that Aviva will have needed to perform manual calculations to provide Mr R with the information he was requesting about the transfer values of his pension plan. And as a result on occasion the information it provided was inaccurate. But that will have caused a degree of inconvenience to Mr R, either through needing to wait for information, or check back to ensure that any calculations had been completed correctly. So I think it appropriate that Aviva should pay some compensation to Mr R for this.

I've thought carefully about what it would be reasonable to ask Aviva to pay. I am mindful that I think Aviva has acted correctly in explaining to Mr R that he isn't able to transfer his pension benefits until their value exceeds the cost of providing the GMP. So any failings, or delays, in the provision of the information hasn't stopped Mr R from making the transfer that he wanted. So I think the amount of compensation recommended by the investigator, of a further £100, is fair and reasonable.

For completeness I have also looked at what happened in 2014 when Mr R reached the normal retirement age of his occupational scheme, and the retirement age stated on his policy with Aviva. At that time Aviva told Mr R that he wouldn't be able to take his benefits as he hadn't reached state pension age, and there was a shortfall in the value of his pension savings when compared to the cost of providing the GMP.

But around three years later, following some complaints being considered by the Pensions Ombudsman and this Service, Aviva agreed that stance had been incorrect. So it wrote to Mr R to tell him that he could take his benefits if he wished (in the form of the annuity specified by the GMP legislation) and that it would backdate those payments to 2014. It seems that Mr R didn't take up that offer. So I am satisfied that what happened in 2014, and three years later, hasn't caused any loss to Mr R.

Aviva has accepted that it accidentally sent some of Mr R's personal information to another consumer. It does seem that the information Aviva released was relatively small, and it doesn't seem it has caused any losses to Mr R. But in the current climate, where identity fraud is rising, I can understand why that data breach would have been of great concern to Mr R.

It seems that Aviva has also shared Mr R's concerns. It has paid him £400 for the distress and inconvenience he has been caused. That payment is in line with what I would think reasonable in circumstances such as these. So I don't think Aviva needs to do anything more in respect of the data breach it caused.

Overall, I understand why this decision will be disappointing for Mr R. The current legislation, and value of his pension savings, doesn't allow him to use them in the way he wants. But I don't think that means Aviva has done something wrong in not allowing a transfer to take place. But I do think that Aviva's explanations to Mr R might have been better, so I am directing he should be paid some additional compensation.

Putting things right

Aviva should pay an additional £100 to Mr R to reflect the inconvenience he has been caused by the way it has responded to his requests for information about the possibility of transferring his pension savings to another provider.

My final decision

My final decision is that I uphold a part of Mr R'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 R to accept or reject my decision before 13 June 2025.

Paul Reilly
Ombudsman