DRN-5678145

The complaint

Through a representative, Mr D complains that Aviva Life & Pensions UK Limited should have carried out thorough due diligence and, as a result, refused to accept a pension transfer application from an overseas introducer in February 1996.

What happened

Mr D has provided his recollection of what happened when he was approached in 1995 to transfer about £5,280 from a public sector 'defined benefit' (DB) scheme.

The person he met face-to-face, Mr L, worked for a company I'll refer to as 'Firm A', based in Germany. As far as his representative has been able to ascertain, this firm did not hold any permissions to carry out financial services business in the UK from the regulator at that time, the Personal Investment Authority (PIA). But Mr D believed at the time that he was getting professional and properly regulated advice.

Having persuaded Mr D that it was in his best interests to make the transfer, Firm A then arranged it by submitting the application form to Aviva in October 1995. Aviva then accepted the transfer sum in February 1996.

Mr D complains that Aviva was bound by the PIA's conduct of business rules and should, as a result, have discovered that Firm A was acting in breach of the requirement that it should be regulated in the UK to advise on and/or arrange the transfer. His representative takes this view that the services Firm A was providing were taking place *"in the United Kingdom"*. As such, they consider that s.5 of the Financial Services Act 1986 (FSA'86) applies.

In brief, s.5 says that any agreement (the pension policy) entered into by an authorised person (Aviva) in consequence of anything said or done by a person (it is alleged this is Firm A) in contravention of FSA'86, shall be unenforceable against Mr D - and he shall be entitled to recover his money and associated losses sustained under that agreement.

I note that originally, Mr D's representative claimed that Mr L acted as an appointed representative or employee of Aviva (who was at that time known as Friends Provident). Aviva has denied there is any evidence that was the case – and that matter was previously considered by another Ombudsman. In their Final Decision dated 22 October 2024, that Ombudsman agreed with Aviva that the evidence showed Mr D's business was most likely introduced by Firm A acting independently of Aviva. That Decision was final and won't be revisited here. But as it didn't consider the claim now being made that Aviva shouldn't have accepted Mr D's business through Firm A, Mr D's representative complained to Aviva again.

They asserted that the expectations on Aviva to conduct due diligence extended to *"…a full and detailed understanding of the business and advice models of* [Firm A]*, …The knowledge and experience of the parties providing the advice, the commissions being earned, the risks of the carrying out of regulated activities in the UK without authorisation and the volume of business proposed to be introduced."* They go on to highlight the shortcomings in Firm A's actual advice (which will not be relevant to this complaint unless I agree that Aviva has in some way failed to uncover such shortcomings).

Aviva issued a second final response to this aspect on 12 December 2024. It said that it wouldn't hold records from nearly 30 years ago to confirm whether or not Mr L was regulated to carry out investment business in the UK. But in its view, it would have been reasonable for Friends Provident at that time to accept business from an independent financial adviser – and it would have had no input into or responsibility for that advice.

Mr D didn't agree and again referred this new complaint to us. Our investigator was unable to resolve the complaint informally, so it's 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.

Aviva's policy application form shows that Mr D was living in Germany at the time of advice. An agent code is given at the foot of the form, with Firm A's address in Germany. Aviva confirmed at the time of the previous complaint that this code was used for international agents, so it appears it would have known at the time that Firm A was based abroad.

However, the PIA adopted the rules of LAUTRO, the self regulatory organisation covering Aviva's predecessor Friends Provident at the time the PIA became the regulator. LAUTRO Bulletin 22 addressed the position where overseas advisers were making recommendations to overseas clients. Although it was written to address situations where the LAUTRO member was itself making the recommendation (and that does not apply here), the clarification it provides is helpful. It reads:

"5. It may also in some cases be helpful to note that where advice is given by a person within one territory to a person in another territory (whether by post or electronically), the investment activity may well take place at both ends of any communication link. In the majority of cases, however, it is likely that advice may be construed as given where it is received, ie; in the territory of the recipient investor. A firm which acts purely as a conduit for advice, without participating in any advisory capacity itself, is regarded as engaging only in an administrative transaction, and its location is therefore irrelevant.

14. The activities of a company incorporated offshore and making investment contracts with the persons outside the UK is not relevant investment business even if the administration relating to the contracts is undertaken in an administrative establishment located in the UK."

Here, both Mr D and the adviser were located outside the UK at the time the advice was given. So there was no onshore element to the advice. I appreciate that Firm A also went on to arrange the pension transfer having advised on it, which would separately be a regulated activity if any element of that took place in the UK. Bulletin 22 doesn't directly address that aspect, but the approach this service would take to "arranging" activities under the Financial Services and Markets Act 2000 (FSMA), which would be analogous to FSA'86, is that the arrangements take place both where the arranger and the client are located.

Again, the evidence suggests both Mr D and Mr L were in Germany at the time the pension policy was being arranged, so this does not advance Mr D's case. The location of Friends Provident for the purposes of this activity is irrelevant – as it would not, itself, be arranging the pension scheme but rather operating it. This does nothing to show that Firm A was acting in breach of any required UK authorisation.

Mr D's representative argues, without any supporting evidence, that Mr L obtained Mr D's signature in Germany but then returned to the UK to arrange the transfer. They further suggest that Firm A was not regulated in Germany to provide the services it did to Mr L. But all of these observations miss the point. S.5 of FSA'86 would only be engaged where Aviva

knew that Firm A was breaching the general prohibition against carrying out regulated investment services without authorisation *in the UK*, not Germany.

The UK does not make legislation governing what should or should not happen in Germany. And there is nothing to suggest that Aviva knew that Firm A was providing any of its services from the UK in any event. The best evidence I have is that Firm A supplied an address in Germany when submitting Mr D's application form. Any goings-on between Firm A and Mr D's DB scheme, for example, would not have been known to Aviva. As a result, I can't see there would have been anything about which Aviva should have been concerned.

Any references to due diligence into the quality of business being submitted by Firm A to Aviva are in my view misplaced. They draw on a body of regulation and thematic reviews carried out over the last 15 years by subsequent regulators (the FSA and FCA) into personal pension providers who accepted business from introducers who were actually in breach of FSMA and/or facilitated unregulated investments that were at high risk of total loss.

I'm not persuaded that the same thing could be said about Aviva's acceptance of Mr D's transfer. Whilst it was expected at the time that a DB pension transfer should not be recommended in the UK unless it was demonstrably in the client's best interests, Aviva was not in a position to question the judgement of any independent financial adviser in this respect. As Mr D was free to use an adviser in the country he was based in, without breaching UK regulations – and Aviva was not required to be familiar with the advice requirements in Germany – there was no basis for it to second guess the adviser's expertise.

As the investigator addressed the payment of commission to Firm A, I will do so also for good order. LAUTRO Bulletin 22 also refers to Commission Rule 4.2.(4)(c). It makes clear that none of the restrictions on commission apply to an investment contract made between a LAUTRO member (Friends Provident) and a person resident outside the UK through someone else (Firm A) who was also outside the UK. That again shows that Friends Provident wasn't acting in breach of any rules by allowing Mr L to receive commission – and it's not a reason to conclude that Mr D's pension plan should not have been set up in 1996.

My final decision

I've concluded that Aviva did not breach any laws or regulatory rules in accepting Mr D's pension transfer business through Mr L of Firm A in Germany. Further, I don't find that it treated Mr D unfairly as a result. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 October 2025.

Gideon Moore
Ombudsman