DRN-5816710

The complaint

Mr D says that Aviva Life & Pensions UK Limited (Aviva) treated him unfairly when it accepted his application for his defined benefit (DB) pension to be transferred to an Aviva personal pension. He says Aviva should compensate him for his losses arising from that transfer.

What happened

Mr D received advice from Firm M to transfer his DB pension to Aviva in 2002. The DB pension had a cash equivalent transfer value of about £91,000. Firm M also advised him to switch other personal pensions to the Aviva pension – but these aren't the subject of this complaint.

In 2006, Firm M ceased to be authorised by the then regulator – the Financial Services Authority (FSA) - and stopped trading. I'll explain more about this below.

Also in 2006, a new adviser advised Mr D to switch his Aviva pension to another provider. Mr D took its advice and the transfer value was about £156,000.

In 2018, the unsuccessful judicial review challenge in *Berkeley Burke SIPP Administration Ltd v Financial Ombudsman Service [2018], EWHC 2878* (BBSAL) was published. In that case, an ombudsman decided a Self-Invested Personal Pension (SIPP) operator was responsible for the losses a consumer suffered in some circumstances because it failed to undertake appropriate due diligence when facilitating the investment. The court rejected the SIPP operator's challenge to that decision.

In 2021, Mr D met another adviser, who said the original recommendation to transfer out of the DB pension in 2002 may have been unsuitable. The adviser suggested that Mr D make a claim to the Financial Services Compensation Scheme (FSCS) as Firm M wasn't trading any more.

Mr D made a claim to the FSCS against Firm M in 2022.

In 2023, the FSCS upheld Mr D's claim. It said his financial loss from the unsuitable transfer was about £396,000. But its cap on payments was £48,000 so it paid him this. Later in 2023, the FSCS informally suggested looking into whoever accepted the transfer to see if they might be liable for the shortfall in the losses.

Mr D complained to Aviva in 2024. He said that Aviva failed in its duty of care and regulatory obligations by not doing more to warn him about going ahead with the transfer of the DB pension. He said that he wouldn't have gone ahead with the transfer if Aviva had treated him fairly. So he said that Aviva is partly responsible for his losses.

Aviva said Mr D had made his complaint too late under the regulatory rules and that it wasn't responsible for Mr D's losses in any event.

When Mr D referred his complaint to our service, one of our investigators concluded that the complaint hadn't been made too late. But the investigator didn't think there were grounds to uphold the complaint.

Mr D didn't agree and asked for an ombudsman to issue a final decision. He's provided a detailed document of submissions (which I've read in full) but also helpfully a summary of his arguments which I set out below:

- Although the current regulator, the Financial Conduct Authority (FCA), didn't exist in 2002, its predecessor the FSA did exist. The FSA's Principles for Businesses (notably Principle 2: requiring firms to act with due skill, care and diligence, and Principle 6 requiring a firm to pay due regard to the interests of its customers and treat them fairly) were in force in 2002 and applied to Aviva. Those principles have always formed the foundation of fair treatment in pension transfers.

- Aviva ignored a clear warning sign in the form of the critical yield in Firm M's suitability letter. At the time of transfer, the critical yield required for the Aviva pension to match the DB pension was at least 8.1%. In 2002, long-term equity return assumptions were typically in the 6–7% range. So an 8.1% hurdle ought to have been identified by Aviva as a red flag because the transfer would almost certainly leave Mr D worse off. Aviva should have warned Mr D about this.

- The court decisions in BBSAL and other cases involving SIPP operators and indeed other decisions of the ombudsman service highlighted that pension providers can and should be held responsible when they facilitate unsuitable transfers – even if they were not involved in giving financial advice.

- Mr D had suffered a significant shortfall in his pension. Aviva is uniquely placed to at least make a meaningful contribution to alleviate hardship. Aviva profited from Mr D's pension transfer for a number of years and was fully aware of the high risks inherent in DB transfers. A contribution would demonstrate Aviva's commitment to fair treatment and to correcting historic harm, in line with the spirit of treating customers fairly.

What I've decided

It doesn't appear that Aviva disputes the investigator's jurisdiction findings - so I shall deal very briefly with the point about whether the complaint has been made in time.

The rules about time limits and whether our Service can look into the merits of a complaint are set out in the DISP section of the FCA's Handbook. DISP 2.8.2R says:

> *"The ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*
> *…*
> *(2) more than:*
> *(a) six years after the event complained of; or (if later)*
> *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint*
>
> *unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;"*

The activity being complained about here – the DB transfer – clearly took place more than six years before Mr D's complaint to Aviva in 2024. But I've seen no compelling evidence that Mr D ought reasonably to have known that he had cause to complain to Aviva more than three years before 2024. So I think Mr D has complained within our time limits.

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 want to make clear that I've considered Mr D's submissions in their entirety. I thank him for them as they are helpful. But the purpose of this decision isn't to comment on every individual point or question the parties have made, rather it's to set out my findings and reasons for reaching them.

When considering what is fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. Ultimately, I'm required to make a decision that I consider to be fair and reasonable in all the circumstances of the case.

I agree with Mr D that the FSA's Principles for Businesses are of relevance. The Principles for Businesses, which were set out in the FSA's Handbook at the time "*are a general statement of the fundamental obligations of firms under the regulatory system"* (see PRIN 1.1.2G). Principles 2, 3 and 6 said:

> "*Principle 2 – Skill, care and diligence – A firm must conduct its business with due skill, care and diligence.*
>
> *Principle 3 – Management and control – A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*
>
> *Principle 6 – Customers' interests – A firm must pay due regard to the interests of its customers and treat them fairly*."

Mr D's arguments centre mainly on the application of these principles in the context of SIPP complaints where, after 2007, many investors were advised or introduced to high risk, unregulated investments that were made using SIPPs. Our service has upheld many complaints and Mr D is right to highlight that the courts have endorsed our approach. And I also agree with Mr D that this approach isn't just confined to SIPP operators – all pension providers have to deal with their customers fairly and exercise care.

So, in determining this complaint, I need to consider whether, in accepting Mr D's DB transfer application, Aviva complied with its regulatory obligations as set out by the Principles. These include that it should act with due skill, care and diligence, to take reasonable care to organise its business affairs responsibly and effectively, to pay due regard to the interests of its customers and to treat them fairly.

But in doing this, I think it's reasonable that I take into account the overall circumstances. The DB transfer involving Mr D was to a pension that would only have permitted mainstream listed investments. I think it's right to assess what Aviva did with this context in mind.

Aviva has said that it discharged its duties by checking that Mr D had received advice from a regulated entity – Firm M - that was able to transact pension transfer business.

Firm M was regulated with the FSA and had pension transfer permissions and pension transfer specialists at the firm in 2002. Whilst the specific adviser involved with Mr D was not one of those pension transfer specialists, there was no requirement at the time (or now) for all individual advisers to have the pension transfer specialist qualifications. It was (and remains) enough for advisers to give advice that can be checked by one of the firm's specialists.

So Aviva could take comfort from the fact that Mr D was dealing with a regulated advice firm capable of undertaking pension transfer work. I've seen nothing about the proposed transaction that I think ought to have prompted an enhanced level of scrutiny. I've seen no evidence that Aviva should have been aware of any other anomalous features relating to Mr D's DB transfer. So although Mr D says the critical yield of 8.1% in Firm M's suitability letter should have been a red flag, I'm not persuaded that Aviva acted unfairly or unreasonably in accepting Mr D's transfer on the basis that it did. Or, that it should have further scrutinised this business under the circumstances.

I'm aware from the FCA's register that Firm M's regulatory permissions were revoked in 2006. The register shows that this was because Firm M failed to satisfy the FSA that its resources were adequate in relation to the regulated activity that it carried on. But this was more than four years after Mr D's pension transfer – and the reason for the FSA's actions don't suggest anything that ought to have given Aviva cause for concern about Firm M in 2002.

So, I'm satisfied it was fair and reasonable for Aviva to accept the application via Firm M and I don't think there's any other reason why it shouldn't have facilitated the pension transfer in 2002.

Clearly, Mr D has my natural sympathy. It appears he's suffered a shortfall in his pension that he can't now recover from Firm M. But based on what I've seen, I can't hold Aviva responsible for what's happened and so I can't fairly ask it to compensate Mr D.

My final decision

I don't uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 4 December 2025.

Abdul Hafez
Ombudsman