

complaint

Mrs W complains Aviva Life Services UK Limited wrongly advised her to put too much of her money in an unsuitable product. Instead it should've advised her to pay down her debts and then invest a smaller amount in a more suitable product.

background

The background and circumstances of this complaint are set out within my provisional decision of 13 December 2017. A copy of this is attached and forms part of this decision.

Neither party objected to the conclusions of my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

For the reasons given in my provisional decision, I am satisfied this complaint should be upheld with compensation as outlined in that decision.

I instruct Aviva to carry out a potential loss calculation assuming Mrs W kept £20,000 of her investment sum in a secure interest-bearing account. To do this it should calculate what she would have received on this sum by the date of surrender using the returns available via the Bank of England's fixed-rate bonds of 12 to 17 months' maturity.

If this shows a loss Aviva must pay this sum plus 8% simple per interest per annum from the date of surrender to the date of settlement of this complaint.

my final decision

I uphold this complaint and instruct Aviva Life Services UK Limited to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 5 February 2018.

Tony Moss
ombudsman

provisional decision

complaint

Mrs W complains Aviva Life Services UK Limited wrongly advised her to put too much of her money (£35,000) in an unsuitable product in 2008. Instead it should've advised her to pay down her various debts, particularly her interest-only mortgage; and then recommend a more modest investment in a more suitable product.

background

Mrs W surrendered her investment in 2011 with a 'profit' of around £1,500.

Aviva rejected her complaint. It said the with-profits fund she'd invested her money in offered a capital guarantee as long as no withdrawals or switches were made in the first five years. The application of regular bonuses and the smoothing of returns to reduce fluctuations made this a suitably low risk product. The potential for a Market Valuation Reduction (MVR) was made clear.

Mrs W's representative said the advisor had failed to disclose that the fund had a Market Valuation Reduction in place at the time of the recommendation, making it a poor value proposition. The charging structure and taxation of gains was not of benefit to Mrs W and further impeded growth potential. Also, she was retired and likely to have a continuing need to access her money, further undermining the suitability of this recommendation.

An investigator at this service felt Mrs W probably wanted to take a small risk with her money to achieve capital growth, yet the advisor's recommendation resulted in 41% of her money going into equity-based products.

Mrs W had recently retired so the investigator didn't think she was in a position to recoup any potential losses if there was a downturn in the equity market. Despite holding some shares, she didn't think Mrs W was an experienced investor or able to assess the risks associated with having such a high proportion of funds invested in one asset class.

She didn't believe the investment was suitable for Mrs W's circumstances at the time and said Aviva should compare the performance of her investment with what her money would've earned if invested in a cautious product.

To do this it should use an equal combination of the following benchmark: the returns on offer via the FTSE WMA Stock Market Income Total Return Index and those delivered by the Bank of England's fixed-rate bonds of 12 to 17 months' maturity.

If this showed a loss Aviva should pay this sum and add 8% simple interest per year from the date of surrender to the date of settlement of this complaint.

Aviva did not agree, and said:

- The fund had an investment in equities but it was pooled across multiple asset classes to mitigate risk
- With-profits funds, by their nature, offer some protection compared to those with direct equity exposure. Taken together, this product was not unsuitable for Mrs W.
- Mrs W wasn't reliant on this money for an income etc., her only goal being capital growth
- The inflation-protected guarantee would've negated any MVR
- She had sufficient money left on deposit for any emergencies

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've firstly assessed Mrs W's finances and broader circumstances to consider how much of her money she should've been recommended to invest at this time.

As a result of a recent inheritance of £50,000 Mrs W had £61,000 on deposit plus £31,000 in an ISA and shares. Mrs W did not ask for advice about these investments and was not given any. It's reasonable to assume she therefore intended to keep this proportion of her money in these risk-based products.

The advisor recorded that Mrs W had a £19,500 interest-only mortgage due to be repaid in 2011. He did not state whether the endowment policy was on target to pay this sum.

He said Mrs W wanted to keep aside £20,000 for emergencies. All this meant she only had a maximum of £41,000 available to invest – although he did not state this.

He recommended she put £35,000 in the with-profits bonds and a further £15,000 into a linked instant access account. By default, this implied she'd leave the remaining £10,000 plus on deposit.

According to the advisor Mrs W's regular income was more than sufficient to meet her outgoings with a modest/reasonable monthly surplus.

Given these circumstances I think it is questionable how much Mrs W should have been advised to invest. She already had a third of her capital in risk-based products and no means of replacing any loss from these.

Overall, I don't think she should've been advised to keep more than half of her total capital in anything which posed any risk to her capital or didn't offer guaranteed interest. This means she shouldn't have been advised to invest more than a further £15,000 outside interest-guaranteeing, secure products.

In reaching this view I have taken account of Mrs W's age, her stated wish for a £20,000 emergency fund, her interest-only mortgage and her modest monthly income surplus.

I also share the investigator's concern about Mrs W being advised to invest all £35,000 in this one product, particularly given there's no evidence that the advisor discussed the potential advantages of some of this money being invested via her ISA allowance.

Mrs W has not explained why she withdrew her entire investment sum within three years, incurring unfortunate charges, but this also suggests her financial needs and objectives may have not been fully explored.

That said, I am satisfied the with-profits bond was suitable for a cautious risk investor and suitable for Mrs W, if advised to invest £15,000 rather than £35,000 in it.

I therefore currently propose to instruct Aviva to carry out a potential loss calculation on the assumption that Mrs W only invested £15,000 in this bond. It should compare the return she received on the other £20,000 of her money (as of the date of surrender) with what she would have achieved if this sum had been kept in a risk-free, interest guaranteeing account.

Given she withdrew this money within three years, I am satisfied that the appropriate benchmark is the returns available via the Bank of England's fixed-rate bonds of 12 to 17 months' maturity.

If this shows a loss I intend to instruct Aviva to pay this sum plus 8% simple per interest per annum from the date of surrender to the date of settlement of this complaint.

my provisional decision

I currently intend to uphold this complaint and instruct Aviva Life Services UK Limited to pay compensation as outlined above.

Tony Moss
ombudsman