

## The complaint

Mr S complains that Aviva Life & Pensions UK Limited (Aviva) mis-sold him his pension plan. He says this because of the poor performance of his pension investments between 2021 and 2023. Mr S also considers that Aviva mismanaged his pension funds as it continued to invest them in line with the final lifestyle percentages after he'd deferred his retirement. And that Aviva failed to act on his instruction to switch his funds into cash to prevent further losses.

## What happened

Mr S had a personal pension policy with Aviva. The plan started on 1 February 2006. I understand it was originally set up by Mr S's employer at that time.

Mr S's funds were set to be invested in a lifestyle programme which was designed to move his investments into lower risk funds as he approached his selected retirement age in 2022. This would start five years before that selected retirement age (SRA). The lifestyling programme aimed to move Mr S's funds into 25% cash and 75% in the index-linked Gilt tracker fund on the SRA. Mr S felt that the lifestyle programme would ensure that his pension would be entirely in safe funds at the time of his SRA.

Mr S decided to defer taking his pension after the lifestyling programme had completed. The value of his pension has since continued to fall in value, so he raised a complaint with Aviva through social media. Aviva acknowledged his complaint on 17 May 2023.

On 18 May 2023, Mr S told Aviva's social media team that Aviva had lost over £70K of his money, despite telling him that it would move his investments into safe funds as he approached his chosen retirement age. He said:

*"When I decided to defer taking my pension I thought you would have been just frozen it or just put it into safe savings type fund, which would have at least made a small amount of interest instead of a 27% loss!"*

And: *"In the meantime I certainly need my pension protecting against even further losses".*

I understand that Aviva's social media team passed on Mr S's complaint to Aviva's complaints team on 18 May 2023. The following day, Aviva confirmed it'd raised a complaint about the large drop in value.

Mr S replied to Aviva the same day. He said he'd also updated Aviva's social media team that morning. He shared this with it. It said:

*"I have been told that Aviva definitely did not move me onto the best plan with low risk in the years leading up/post my planned retirement age, which the massive loss in the last 19 months confirms, and it seems the fund managers have just sat there watching my plan de value massively, which is irresponsible, immoral and bad financial management, I have paid Aviva a fee to manage my pension over many years, and I trusted you to do this in my best interest, and you have failed miserably. To stop this rot and further losses, it has been recommended to me that you move my pension to a cash fund, which is what you should*

*have done when I decided to defer taking my pension (to protect it, whilst my complaint is being looked at and /you consider what action to take, I don't want you to lose any more of my money".*

Aviva issued its final response to the complaint on 19 May 2023. It didn't think it'd done anything wrong. It said that even though Mr S's chosen investment funds were actively managed, it couldn't avoid losses. It said that the index-linked Gilt tracker fund Mr S was invested in held government and corporate bonds which were historically low risk. But that market factors had caused these to lose value.

Aviva also said that Mr S's pension had to be invested somewhere until he cashed it in or transferred it elsewhere. It included fund factsheets in its response. And told Mr S that if he was unsure whether these funds remained suitable for him, he could switch funds.

Aviva sent a further reply to Mr S on 24 May 2023. It said it couldn't provide financial advice. It said that the five-year lifestyle programme was attached to Mr S's plan when it'd been part of a group scheme. It also said that although lifestyle programmes were designed to move investments into lower risk funds as retirement neared, they had different ways of doing this.

Aviva said that Mr S's chosen lifestyle programme switched into the index-linked Gilt tracker which had a risk rating of 5. And that using long Gilts to reduce risk in a pension wasn't linked to its risk rating, but instead its relationship with annuity rates. Aviva said that as long-dated gilts had an inverse relationship with annuity rates, if annuity rates fell then the value of the index-linked Gilt tracker was likely to go up. And that this would mean that the amount of pension that could be bought was unlikely to change significantly.

Aviva also said:

*"If you would like to remove the lifestyle programme and select your own funds to be invested in please let me know and I can arrange this for you. I have attached a list of funds that are available for your plan".*

Mr S felt that Aviva had provided financial advice. He felt it'd told him that it would move his pension in the five years before his SRA gradually into low-risk funds to protect his pension. He also wanted to know why Aviva had continued the lifestyle programme when he'd decided to defer taking his pension. He said he'd not instructed it to do so. He felt his pension should've been frozen or put into a cash fund.

Aviva replied to Mr S. It said that it was his responsibility to make sure his funds were suitable for his needs. It also said that Mr S received annual statements showing his plan's value. And that he had access to the Aviva member site where he could monitor his plan's performance.

Aviva also said that when Mr S had deferred his retirement date in September 2022 the lifestyle programme was at its final allocation percentages. And therefore there'd been no further switches since that date.

Mr S replied to say that his fund should've been frozen, not the lifestyle programme.

Mr S wasn't happy with Aviva's response. So he brought his complaint to this service in August 2023. He felt that Aviva had recommended the five-year lifestyle investment programme to him for the planned last five years of his pension plan. And that it'd told him that it would gradually move his funds over to lower risk investments in order to protect them as he approached his SRA.

Mr S said that his fund value had fallen by almost £70K from 30 September 2021 to 30 September 2022, despite the apparent protection provided by the lifestyling programme. He said he'd decided to defer taking his pension after the lifestyling programme had ended in September 2022. And that he hadn't given instructions to Aviva to continue the programme further. But that it'd continued the lifestyling programme leading to further losses regardless.

Mr S also said he told Aviva on 18 May 2023 to transfer his funds to the Cash Fund to prevent further losses. But this didn't happen.

Mr S also felt that the lifestyle programme was totally wrong for him and not low risk at all. He felt his pension should've been invested 75% in the Aviva Cash Fund and 25% in its index-linked Gilt tracker, rather than the 25% Cash/75% index-linked Gilts the chosen lifestyling had actually aimed for. He said that if it'd been invested in this way, he wouldn't have suffered massive losses. Mr S also felt he'd been sold the wrong product and that Aviva had badly managed his funds, despite charging him a monthly fee.

Mr S wanted Aviva to put the money he'd lost back into his pension and for his fund to be put in a safe cash fund.

Our investigator didn't think that Aviva had done anything wrong. He said the pension had been set up by Mr S's employer and that Aviva hadn't advised Mr S on this process. So, he couldn't fairly hold Aviva responsible for any mis-sale. He also had no evidence that Aviva had selected the lifestyle programme Mr S had been invested in. He also felt that Aviva had correctly followed the selected investment programme, so he couldn't fairly hold it responsible for any investment loss.

Our investigator also said he'd not seen any evidence that Mr S had properly instructed Aviva to move his funds to cash.

Mr S didn't agree with our investigator. He made the following new points:

- He felt our investigator had failed to get key evidence that his employer had specifically selected the five-year lifestyle programme when the plan had first started. He felt that in its absence Aviva should be held responsible for the mis-sale. He also said that when his plan was no longer linked to an employer, Aviva should've advised him on the lifestyling process.
- He felt it was unfair that he'd continued to pay charges to Aviva despite his massive losses.

As agreement couldn't be reached, the complaint has come to me for a review.

### **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.

Having done so, I don't uphold the complaint, for the following reasons.

I don't think Aviva has made any errors here. I think it managed Mr S's pension investments in line with the terms and conditions of his plan. And it was Mr S's responsibility to ensure his investments were appropriate for him. I've also not seen sufficient evidence that Mr S gave Aviva a valid instruction to switch his pension funds into cash. I know my decision will be disappointing for Mr S. I'll explain the reasons for it.

I first considered if Aviva gave Mr S any advice. Within this, I also considered if there was any evidence that Aviva should've advised Mr S on the lifestyling programme.

*Did Aviva give Mr S any advice?*

Mr S felt that Aviva had recommended the five-year lifestyle investment programme to him for the planned last five years of his pension plan. But there's no evidence that Aviva recommended this programme to him.

I appreciate that Mr S felt that this service should've identified exactly who had specifically selected the five-year lifestyle programme when the plan had first started. And that in the absence of that confirmation, Aviva should be held responsible for the mis-sale. But I can't fairly agree.

From what I've seen, Aviva wasn't responsible for the sale of Mr S's pension plan, or for giving him any personal advice on what was suitable for him. The plan was chosen by his employer. Aviva was the administrator and plan provider, not the adviser.

As such, Aviva is unable to give financial advice. This is clearly stated on Mr S's annual statements. These statements also make it clear that the choice of investment is one for Mr S to make for himself, or with the help of a financial adviser. For example, the November 2020 yearly review of Mr S's pension plan stated:

*"It's important that you make the right choices for your personal circumstances, so we recommend you talk to your financial adviser about your retirement aims. This might include discussing changes to your plan's investment funds, paying more into your plan or perhaps changing your retirement date.*

*We are unable to give financial advice, but we are happy to help with any queries you may have".*

The 2020 statement also provided a clear explanation of how Mr S's chosen lifestyle investment programme would work. And stated within that explanation:

*"The switch process to gradually move your plan into lower-risk investments has already started. If you think the lifestyle investment programme is no longer suitable for you, it is possible to opt out. Please contact us if you want to do this".*

Overall, I'm satisfied that Aviva had no part in the choice of the lifestyle investment programme Mr S's complaint is about.

I've also considered if the documentation Aviva sent to Mr S made it clear what he needed to do if he wanted to change his investments. Having done so, I'm satisfied that the annual statements, and other letters Aviva sent to Mr S – for example the 2017 paperwork it issued after Mr S made a single contribution into the plan – provided clear information about how investments could be changed. Therefore I'm of the view that Mr S was fairly informed about how to make investment switches.

Mr S also said that when his plan was no longer linked to an employer, Aviva should've advised him on the lifestyling process. But I can't fairly agree.

I say this because Aviva isn't regulated to give advice. And because, as I noted earlier, I consider it provided enough information to ensure Mr S was aware that lifestyling applied to his pension and how it worked. It also made it clear that it was Mr S's responsibility to regularly review his investments to ensure they were still suitable.

Mr S also complained that the lifestyle programme was totally wrong for him. And that it wasn't low risk. He said he should've been targeting 25% in index-linked Gilts and 75% in cash.

As I noted earlier, there's no evidence that Aviva recommended the lifestyle programme to Mr S. And the evidence shows that Aviva made it clear that it was Mr S's responsibility to choose his own investments. It also gave him information about how he could do so. Therefore, while I appreciate that Mr S has been told that the lifestyle programme he'd invested in wasn't right for him, I can't fairly hold Aviva responsible for that. I say this because it was up to Mr S to decide when and if he wanted to change his pension investments.

Mr S's complaint is based on the poor performance of his investments over a particular period. So I next considered whether Aviva can fairly be held responsible for this.

*Is Aviva responsible for the poor performance of Mr S's investments?*

I've noted earlier that Aviva didn't give Mr S any advice. I also consider that Aviva made it clear to Mr S that the investment of his pension was his responsibility. But I also need to consider if Aviva managed Mr S's investments in line with its terms and conditions.

Mr S was invested in the lifestyle programme which targeted 25% cash and 75% index-linked Gilts at his SRA. In his view, our investigator covered in detail the information Aviva had provided to Mr S to explain how the lifestyle programme would work. He felt that the lifestyling approach was applied correctly. And noted that Mr S had confirmed that he was aware of the lifestyling programme and when it was due to end. From what I've seen, I agree with our investigator here.

While I understand that Mr S feels Aviva must be in some way responsible for the poor performance of his pension, I don't agree that Aviva has failed to manage his pension properly.

I say this because it isn't Aviva's role to actively manage Mr S's funds. Instead, as the pension provider and administrator, Aviva's role is to provide information about fund choices to its customers, so that they can make an informed decision about where to invest, and then to invest its customers' funds in line with their instructions. Aviva doesn't give advice on the best way to invest funds, it simply acts on its customers' investment instructions.

I've seen no evidence that Aviva failed to carry out its role. From what I've seen, Aviva managed Mr S's pension in line with his chosen lifestyling programme. Therefore I can't fairly hold it responsible for the performance of the chosen funds.

I also note that Mr S considered it was unfair that he'd continued to pay charges to Aviva despite his massive losses. But I can't agree. I say this because the evidence shows Aviva correctly managed Mr S's pension. So it wouldn't be fair or reasonable to ask it not to charge Mr S for that service, regardless of the performance of the underlying investments.

I next considered whether Aviva failed to follow a switch instruction. And whether it incorrectly continued the lifestyle programme after its end date without Mr S's instruction.

*Did Aviva fail to follow an investment instruction?*

Mr S felt that the lifestyle approach wouldn't continue after the end date in 2022. He said he hadn't given Aviva any instructions to continue the programme further. And felt that Aviva's decision to continue the lifestyling programme without his instruction had led to further

losses.

As our investigator noted, the lifestyling programme didn't incorrectly continue after its due end point. At this time, the programme had completed and Mr S was left invested in the 25% cash and the 75% index-linked Gilts tracker the programme had aimed for. As I noted earlier, if Mr S had wanted to change his investments at this point, or at any earlier point, Aviva had provided him with sufficient information that he knew what he would have to do to make a switch.

Mr S further felt that Aviva should've frozen the value of his fund or held it in cash at the end of the lifestyle programme. But I can't fairly agree. As I've already noted, it was Mr S's responsibility to decide how to invest his pension. Aviva couldn't arbitrarily change how he was invested without an instruction from him. So I can't reasonably say that it should've frozen the value of his fund or moved it all to cash.

Mr S said he did instruct Aviva to transfer his funds to the Cash Fund on 18 May 2023. But this didn't happen.

I included the wording Mr S sent to Aviva's social media team on 18 May 2023 in the background section of this decision. And while I understand why Mr S felt that he'd given a clear instruction to transfer his funds to cash, I can't fairly agree.

I say this because, after receiving Mr S's note on 18 May 2023, Aviva's social media team told Mr S it didn't have any access to his plan. It also replied to Mr S as follows:

*"We've not logged your concerns at this point, but when you speak with the team please let them know what's happened and they'll record and address your concerns with you and help all they'll can".*

I also note that other communications to Mr S from Aviva had explained what he had to do if he wanted to give it a switch instruction. But he didn't use the available methods. Instead, he vaguely mentioned something to a team which had already told him it didn't have access to his plan.

Additionally, after it'd issued its final response to the complaint, Aviva wrote to Mr S to tell him that if he wanted to change his investments it could arrange that for him. It also sent him a list of available funds. But I've seen no evidence that Mr S engaged with this offer. Therefore I can't reasonably conclude that Aviva failed to follow an investment instruction.

I understand why Mr S is disappointed in the performance of his plan over the period in question. It must have been extremely disappointing to see such a large reduction to his pension fund's value, especially when it's clear that Mr S felt that the lifestyle programme would ensure that his pension would be entirely invested in lower risk funds at the time of his SRA.

It should be noted that the aim of the lifestyling programme Mr S was invested in was to lower risk for a customer who intended to take a 25% tax-free cash lump sum at SRA. And to use the remaining 75% of the fund to purchase an annuity. So the programme tried to ensure that its value was linked to the price of annuities. It didn't aim to ensure that the fund value didn't fall.

I've seen no evidence that Aviva advised Mr S to invest in the lifestyling programme. Nor have I seen any evidence that it was incorrectly operated. I've also seen no evidence that the lifestyling programme provided guarantees about fund values. Instead, it's aim was to ensure that Mr S could target a 25% tax-free cash lump sum and use the remaining 75% of

his fund to purchase an annuity. This is a standard lifestyle arrangement offered by most pension providers. So I can't agree that 75% cash and 25% index-linked gilts would be a better target. In any event, if Mr S had wanted to invest his pension funds in line with 75% cash and 25% index-linked gilts he could've done so.

I'm sorry that Mr S's pension fund has gone down in value. I appreciate that this has caused him shock and severe disappointment. But I can't fairly hold Aviva responsible for that fall. And I've seen no evidence that it did anything wrong. So I can't uphold the complaint.

### **My final decision**

For the reasons set out above, I don't uphold Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 1 February 2024.

Jo Occleshaw  
**Ombudsman**