DRN-4672169

Financial Ombudsman Service

The complaint

Mr S has complained that since Aviva Life & Pensions UK Limited ('Aviva') merged one of his holdings with a different fund, the performance has been poor. He has lost money because of the merger and would like to be compensated for this.

What happened

Mr S had invested with Aviva for more than 25 years. In February 2022 Aviva wrote to advise him that in July 2022 his holding of the FLC New With-Profits Sub-Fund would be merged with the FLC Old With-Profits Sub-Fund and the newly merged fund would be called the FLC With-Profits Sub-Fund. The reason given was to allow Aviva to operate more efficiently and Mr S would be invested into a larger, combined with-profits fund.

Mr S wasn't happy with the performance of the new fund. He spoke with Aviva on 12 April 2023, and it sent a follow up letter on 14 April confirming what was discussed, not upholding his complaint;

- An Alignment Bonus had been added on 1 January 2023 to all policies previously invested in the FLC New fund to even up the financial position of the two previous funds.
- This ensured bonus rates remained fair to all customers in the merged fund
- A one-off Reorganisation Bonus had been added to eligible policies on 1 January 2023 instead of being added at the point of claim as had happened before.
- Merging the two funds allowed Aviva to operate them more efficiently in a combined larger fund.
- An independent actuary had considered the effect of the merger on pay-outs and concluded the impact wasn't expected to be material.

Unhappy with the outcome Mr S brought his complaint to the Financial Ombudsman Service. He told us that since his well performing investment – returns of 6/7% annually – had been merged with another fund it had crashed spectacularly, and he hadn't ever received a satisfactory explanation about this. Aviva had also failed to respond to his questions or communicate with him during which time the fund further fell in value. He wasn't happy with how Aviva had addressed his concerns.

Our investigator who considered the complaint didn't think it should be upheld;

- He detailed the 'Questions and Answers' document in which Aviva had explained the reason behind its decision to merge.
- Mr S might not have agreed but Aviva had been a business decision to merge the two funds which it was entitled to make and that didn't have adverse effects on the policyholders.
- An independent actuary report had confirmed that there wasn't expected to be a material adverse effect on the policyholders which showed that Aviva had

considered the impact this would have when making its decision.

- Performance wasn't something that Aviva could control because it was influenced by several external factors.

Mr S didn't agree with the investigator and correspondence continued. Simply put, Mr S wanted to know the reason for the poor performance since the merger – what changed in the investment profile to explain the failure. And from May to August 2023 Aviva's customer services didn't provide the response he had been promised, and he lost further funds until he closed his account in August when he surrendered his bond.

As the complaint remained unresolved, it was passed to me to decide.

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.

After doing so, I've reached the same conclusion as the investigator, and broadly for the same reasons. I'll explain why.

<u>The merger and subsequent investment performance</u>

Mr S was advised of the proposed merger in 2022 and it went ahead on 1 July. Mr S didn't have a choice about the merger – as an example he couldn't vote on whether it should go ahead. It was to proceed in any event provided Aviva's Board considered the terms to be fair and the Independent Actuary was satisfied it wouldn't have a material adverse effect on customers' reasonable expectations.

As a result of the merger the merged fund would be managed as a single portfolio rather than two separate portfolios. Mr S has said he wanted to know where the funds were invested and why the performance had declined since the merger.

The notices in advance of the merger made clear that the investment strategy of the merged fund would remain the same but to consider this further I've reviewed the 'FLC With-Profits Sub-Funds and Investment Summary' documents from August 2019 (the year prior to the COVID pandemic) and March 2023 to assess changes pre and post the merger over the period.

The documents outline how the fund was managed during the respective years and provided details of the asset mixes and investment returns. I can see from Aviva's phone notes of 12 April that Mr S was referred to Aviva's website for further information about the fund. And this is where I have ascertained the information from that I have referred to below. The call note says that Mr S hadn't looked at the website at the time, but I am satisfied this information was available to him to view.

I note that in both documents the funds are recorded as having a 'low to medium volatility – 3' and that they typically invest in corporate bonds or a mix of assets. And those assets include equities, property, fixed interest, alternative investments, and cash. It's advised that assets can rise and fall in value. This indicates to me that the risk rating for the fund hadn't changed over those years and remained invested into a mixture of assets.

The March 2023 document also provides additional year end historical data for the asset allocation for the previous four years as well;

Asset	2018	2019	2020	2021	2022

UK share (equities)	24.7%	18.1%	19.0%	18.3%	17.4%
International shares (equities)	25.7%	29.2%	27.2%	27.4%	27.1%
Property	13%	10.6%	9.6%	9.7%	10.7%
Alternative investments		5.9%	6.3%	6.6%	6.3%
Fixed interest – gilts	14.7%	14.1%	11.8%	11.6%	12.1%
Fixed interest – other bonds	21.9%	21.0%	25.9%	22.2%	26.1%
Cash/money market	0%	1.1%	0.2%	4.2%	0.4%

With reference to the assets within the fund as at 31 December 2022, the document refers to the UK bond market and that gilts lost more than 25% of their value and corporate bonds losing nearly 18% of their value. The accompanying report confirms this was the result of Bank of England interest rate rises and uncertainty because of the September mini budget. And in that year, I note that the fund had a five-year high level of exposure to fixed interest assets at 38.2% of the fund overall which I think explains the underperformance relative to previous years that Mr S has referred to.

However, I've seen nothing to suggest that either the risk profile or the investment objectives of the fund had changed over the period, and which could have potentially caused the relative underperformance. Rather it looks like it was a performance issue because of the unexpected consequences of the mini-budget and interest rate increases and the affect that had on the fund because of the slightly higher than usual exposure to fixed interest assets.

And provided a fund is invested in line with its overall objectives and disclosed risk – in this case 'to provide steady capital growth over the medium to long term by investing in a broad range of assets' with a 'low to medium volatility' – then it wouldn't be fair or reasonable for me to uphold the complaint on this point. I haven't seen anything to suggest that the fund was invested outside of its stated investment objectives or risk profile. And I think it's most likely that the lower than hoped for performance reflects the underlying assets held – which Aviva made clear can rise and fall in value.

And the fact that the risk of underperformance of the fund materialised, does not automatically mean that Aviva has done anything wrong. In the absence of any evidence that Aviva mismanaged the portfolio – and the performance of the portfolio alone doesn't evidence this – I am unable to say that Aviva has done anything wrong in the overall management of the portfolio.

While I can understand why Mr S isn't happy with the performance of the fund during the period in question, but the issue of fund performance is not straightforward. The fund that Mr S invested in is actively managed – that means the money is invested in specific assets or funds chosen by a fund manager. If the manager in a certain period poorly performs that's because the fund manager has taken certain decisions that haven't paid off – at least in the period under review. That's disappointing, of course, but reflects the fund manager exercising their judgement – which they're supposed to do. It doesn't mean the fund manager has been negligent or failed in their duty of care. And it doesn't mean the fund manager's decisions won't pay off over the longer term.

I can't see there was any significant alteration to the investment profile after the merger. There is always an element of risk in all types of investment, and the rate of return from investments such as this fund aren't guaranteed, and values can fall as well as rise. The events I've described above caused fixed interest to underperform and reduced returns but because I can't see that Aviva has done anything wrong, I am not upholding this element of Mr S' complaint.

The bonuses

Mr S has asked whether the discretionary element of the profit that's assigned to the policy – the annual bonus – has been fairly and consistently applied to his fund. However, it's a commercial decision by the product provider how much the bonus should be. So, it would be difficult for me to say that a bonus should be different from that which has been added. While I appreciate Mr S may have concerns about this, I haven't seen anything to suggest mismanagement by Aviva.

As Mr S is aware, the value of his investment accumulates through the addition of bonuses – the value of which is decided by the provider's actuaries. And although bonuses would be partly based on gains within the with-profits fund, the amount of the bonus is not an equal proportion of the profits of the fund. Instead, the fund manager would consider the profit made within it and employ smoothing to ensure bonuses can be added in later years when markets may be underperforming.

The manager of the fund also must hold themselves to the guarantees that have to be met – such as accrued bonuses – when investments are cashed in. So again, the performance of a with-profits fund doesn't necessarily reflect the current performance of the stock market, or the performance of the stock market over the life of the investment. It's for the product provider to decide what the bonus should be so is not something that I can consider.

I've looked at the merger 'Questions and Answers' document which confirmed the pay-outs that had been paid to holders of the New and Old Fund since they were previously split into two but further to the new merger, all bonus rates would be the same for both New and Old funds. And I note the bonuses paid to Mr S were;

- Reorganisation bonuses were no longer to be added when a claim was made after 31 December 2022 and instead a one-off Reorganisation bonus of £1,806.64 was added to Mr S' policy on 1 January 2023.
- A one-off Alignment bonus of £1,060.61 on 1 January 2023.

The 'Questions and Answers' goes on to say, 'In all other respects the policy returns have been identical between the two funds.' And I also note the document referred to the allocation of profits to be distributed to with-profits policyholders (90%) compared to shareholders (10%) and that this was 'common across the with-profits industry and not altered by merging the funds'. This suggests to me that the proportion of profits allocated to policyholders wasn't going to change. But as mentioned above, it would be for the product provider to decide in any event. And I haven't seen anything to suggest that the bonuses, post merger, haven't been fairly and consistently applied to Mr S' policy.

Aviva's response to Mr S' queries

According to Aviva's records Mr S raised his complaint during a phone call on 5 April 2023. As a result of that Aviva wrote to Mr S the next day to acknowledge his complaint and then spoke with him on 12 April and sent a letter on 14 April.

I can see that Mr S followed this up with a further letter as he didn't consider that his concern about the fund's performance had been addressed. And he called on 28 April. In response he was advised that his complaint would be reinvestigated as he wasn't happy with outcome so far reached.

Mr S then chased this up on 4 August as he hadn't received a response as promised. Again, he was advised that Aviva would re-investigate his complaint and contact him as soon as possible. He wrote again on 14 August but never received a reply.

Mr S has said that his fund lost an additional £1,000 in value while he was waiting for a response from Aviva to the complaint points he made and that his earlier questions hadn't been answered. But as referred to above, Mr S was advised of the information available on Aviva's website during his call of 12 April. So, I think this information was available to him at the time and which would have explained why and how the fund had performed, as well as the investment and risk profile.

While I accept that Mr S must have been frustrated because of the lack of response but it was for Mr S to decide whether to remain invested in the fund. It was Mr S' decision to remain invested – it wasn't Aviva's role to provide him with advice – and if he was unhappy with the performance, he was free to sell the investment if he wished. Aviva did have an obligation to provide Mr S with information and I think there was sufficient information available to him for him to have made an informed investment decision.

Taking all of the above into account, I don't uphold Mr S' complaint as I don't think that Aviva has done anything wrong. I've seen nothing to suggest that the fund has been mis-managed, rather it is a matter of it not performing as well as would be hoped. And while Mr S was frustrated at the lack of response from Aviva, he was given sufficient information in the merger documents and was guided to information on its website, which I think would have answered his queries about the fund investment profile and performance. So, I don't uphold Mr S' complaint.

I appreciate Mr S will be disappointed with the outcome to his complaint. It's clear he feels strongly about it. But I hope I have been able to explain how and why I have reached that decision.

My final decision

For the reasons give, my final decision is that I don't uphold Mr S' complaint about Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 April 2024.

Catherine Langley
Ombudsman