DRN-5155631

The complaint

Mr S has complained because he feels Aviva Life & Pensions UK Limited mismanaged his pension and the underlying investments.

What happened

Mr S has a Group Personal Pension Plan which was set up by his employer. The plan started on 1 October 2016. It was due to run for less than seven years as Mr S was four months away from his 59th birthday and the planned retirement age was his 65th birthday.

The introduction letter said Mr S's pension contributions were invested in the default investment solution selected by his employer. The accompanying Membership Certificate said the contributions would initially be placed into the following underlying investment funds:

- FL BlackRock (50:50) Global Equity Index (Aquila C) 90%
- FL BlackRock Over 15 Year Gilt Index (Aquila C) 10%

(for ease, I will refer to these as the 50:50 fund and the 15 year fund)

The Membership Certificate also said *"You have selected the Lifetime which is designed to manage your investments throughout the term of your plan. As part of the investment programme your investments will be moved into the lower risk funds during the 7 years before retirement"*.

Mr S was sent annual review documents around April/May each year. These repeated that he was invested in the Lifetime investment programme, that his contributions would be moved into lower risk investments during the seven years before his retirement age and that this switch process had already started. They also showed, in monetary terms, how much of Mr S's total contributions were invested in each fund. I haven't seen the documents sent in 2019 but I assume they contained similar information.

The 2023 review documents showed that the value of Mr S's pension had decreased by £2,000 from the previous year, despite more than £15,000 being paid into it during the year. Mr S made enquiries with Aviva and he discovered that 80% of his contributions were invested in what he refers to as high risk investment funds. As the pension was in the seven year period before his retirement date he understood the contributions had always been in a low risk fund. As only 20% of his contributions had been moved to a low risk fund, Mr S didn't feel they had been invested in line with what he'd been told each year.

Aviva didn't think it had done anything wrong or had treated Mr S unfairly. It said:

- it wasn't authorised to make investment decisions on Mr S's behalf
- Mr S's employer was responsible for deciding on the investment funds included in the default programme
- it wasn't responsible for the performance of those funds, and
- the annual statements told Mr S that if he was unhappy with how his contributions were invested he should make changes.

Mr S referred his complaint to us. The three main points he made were:

- the contributions were initially placed in incorrect funds ie they shouldn't have been in high risk funds
- the contributions were mismanaged as the majority were moved from one high risk fund to another – which was contrary to correspondence he received each year
- the annual correspondence wasn't transparent.

What I provisionally decided – and why

I issued a provisional decision which explained why I wasn't minded to uphold the complaint. The relevant parts of my provisional decision are outlined below and form part of this decision.

- The crux of the complaint is whether Mr S's pension contributions were invested as they should have been. At various points, the contributions were invested in the 50:50 fund, the15 year fund and a Sterling Liquidity fund (which I will refer to as the Sterling fund).

- When the plan started Mr S was less than seven years from the planned retirement date. So, Aviva had a responsibility to ensure that his contributions were invested in the appropriate funds during that seven year period. I looked at what the plan documentation said should have happened and compared that to what did happen.

- I asked both parties to provide documentation from 2016 which showed where Mr S's contributions should have been placed. Mr S didn't provide anything and Aviva provided documentation dated 2017. This was after Mr S's plan started, but Aviva told me it believed the position outlined in the documentation was the same as when Mr S joined the scheme in 2016. Given the lack of documentation from 2016 and Aviva's comments, I thought it was fair to use the 2017 documentation in order to decide the complaint.

- Booklets titled 'Choosing your own investment funds' and 'How contributions are invested' explained the movement of the contributions in the seven years before retirement. In summary, they said there was a gradual transfer between funds to reduce Mr S's exposure to investment risk. Both booklets contained a table/graph showing the target percentage of the contributions invested into each fund, and how the contributions would gradually move in the seven year period up to the retirement date from the 50:50 fund to the 15 year fund and to the Sterling fund.

- The following table showed where according to the table/graph in the booklets Mr S's contributions should have been invested and where according to the introduction and annual review documents they were invested:

Years to retirement	Where contributions were supposed to be invested	%		Where contributions were invested	%
7+	50:50 fund	100%		50:50 fund	90%
	15 year fund	0%		15 year fund	10%
	Sterling fund	0%		Sterling fund	0%
6	50:50 fund	85%		50:50 fund	83%
	15 year fund	15%		15 year fund	17%
	Sterling fund	0%		Sterling fund	0%
5	50:50 fund	70%		50:50 fund	68%
	15 year fund	30%		15 year fund	32%
	Sterling fund	0%		Sterling fund	0%
4	50:50 fund	55%		50:50 fund	?
	15 year fund	40%		15 year fund	?
	Sterling fund	5%		Sterling fund	?

3	50:50 fund 15 year fund Sterling fund	40% 50% 10%		50:50 fund 15 year fund Sterling fund	37% 52% 11%
2	50:50 fund 15 year fund Sterling fund	20% 65% 15%		50:50 fund 15 year fund Sterling fund	18% 66% 16%
1	50:50 fund 15 year fund Sterling fund	10% 70% 20%		50:50 fund 15 year fund Sterling fund	9% 70% 21%

- Aviva explained that the fund switches took place on a monthly basis ie not once a year on/around Mr S's birthday.

- So, seven years from retirement Mr S's contributions should have (had he had the pension at that point) been invested solely in the 50:50 fund. Then each month some of his contributions should have switched to the 15 year fund until it got to the point six years from retirement (ie on Mr S's 59th birthday) that 85% of the contributions were invested in the 50:50 fund and 15% of them were invested in the 15 year fund.

- When Mr S's plan started there were six years and four months until retirement. So on a pro-rata basis 90% of the contributions should have been invested in the 50:50 fund and 10% invested in the 15 year fund. As that's what happened I was satisfied that Mr S's contributions were correctly placed into the relevant funds at the start of the pension.

- I felt the figures from six years to retirement to one year to retirement were broadly in line with each other. I didn't expect them to match exactly because the percentages on the left hand side of the table showed the position on/around Mr S's birthday whereas the percentages on the right hand side showed the position two/three months later when the annual review documents were sent. There would have been some movement in the fund values and some movement between the funds between those two dates. Accordingly, I was satisfied that during this period it was more likely than not that Aviva correctly switched Mr S's contributions as outlined in the 'Choosing your own investment funds' and 'How contributions are invested' booklets.

- The table below showed where Mr S's funds should have been invested one year from retirement and at retirement:

One year to retirement	50:50 fund 15 year fund Sterling fund*	10% 70% 20%
At retirement	50:50 fund 15 year fund Sterling fund*	0% 75% 25%

* In my provisional decision I incorrectly quoted this as a 20 year fund

- In December 2022 Mr S changed the retirement date from February 2023 to February 2024. So that meant in February 2023 rather than the contributions being split on a 0%/75%/25% basis they should have reverted back to the10%/70%/20% split.

- The annual review document issued in May 2023 showed the split as 8%/71%/21%. As there would have been some movement between February and May 2023 in both the fund values and in where the contributions were placed, I thought it was more likely than not that Aviva continued to switch Mr S's contributions as outlined in the 'Choosing your own investment funds' and 'How contributions are invested' booklets.

- For completeness, I'd seen other booklets (both titled 'A guide to your [Mr S's employer's] Retirement Savings Plan') which also contained a table/graph that outlined how the contributions should be moved into lower risk funds. The booklets were dated August 2022 and March 2023 so they weren't in force when Mr S's plan started or for the majority of time that his contributions were being switched between funds. Accordingly, I didn't consider them to have any evidential value in respect of this complaint.

- Mr S made various comments about where his funds were placed and the clarity of the information he received each year, eg:

    - the initial contribution should never have been placed into high risk funds
    - even though the 15 year fund "was crashing" Aviva still increased the percentage of his contributions going into the fund
    - the allocation of his contributions wasn't consistent with the narrative in the annual correspondence that they would be moved into low risk funds.

- I'd already concluded that Mr S's contributions were switched to the appropriate funds when they should have been. The annual review documentation didn't say the contributions would be moved to *low* risk funds; it said they would be moved to *lower* risk funds. The 'Choosing your own investment funds' booklet described the funds as:

    - 50:50 fund – risk rating 5 (medium to high volatility)
    - 15 Year fund – risk rating 4 (medium volatility)
    - Sterling fund – risk rating 1 (lowest volatility)

- On that basis, I thought the documentation Mr S received each year accurately described what would happen to his contributions.

- The introduction letter sent to Mr S said *"Your contributions are currently being invested in the default investment solution <u>selected by your employer</u>. If you decide that this isn't appropriate for you, you can now or in the future change where your future contributions are invested"* (my underlining). With this in mind, I didn't think Aviva was responsible for the funds selected by Mr S's employer or for what percentage of the contributions were placed in each fund at what time. In essence, Aviva simply administered the pension and placed the contributions into the funds as instructed by Mr S's employer. If Mr S was unhappy with the funds chosen by his employer and/or the allocation of his contributions to those funds I thought he needed to take that up with his employer.

- To summarise, in switching Mr S's pension contributions between funds I concluded that Aviva acted fairly and in line with the pension documentation.

Responses to my provisional decision

Aviva accepted my provisional decision. Mr S didn't agree with or accept it. He provided screenshots which showed the 50:50 and 15 year funds had a risk rating of 5. He said this was than the medium volatility I'd referred to and that Aviva had verbally referred to it as high risk. As the vast majority of his contributions were moved from the 50:50 fund into the 15 year fund he said this showed they went from one high risk fund to another one – which contradicted the annual review correspondence.

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.

There are essentially two parts to Mr S's complaint:

1. whether his pension contributions were moved from the 50:50 fund to the 15 year and Sterling funds as they should have according to the pension documentation, and
2. whether the documentation he received each year accurately reflected what was going to happen with the contributions.

Part 1

In my first provisional decision I concluded that:

- at the start of the pension all of Mr S's contributions should have been placed in the 50:50 fund (not the 90%/10% split) – this was on my understanding that the fund switch took place once a year on/around Mr S's birthday
- during the six years to retirement to one year to retirement period it was more likely than not the contributions were correctly switched
- at the original zero years to retirement date (ie Mr S's 65th birthday) the position with the contributions was broadly in line with the position it should have been given that Mr S had recently changed the retirement date.

So, in summary, I felt Aviva's only error was in respect of where it placed Mr S's contributions at the start of the pension.

In my second provisional decision (outlined above) my conclusion only changed in respect of the first bullet point – I now concluded that Aviva had correctly placed Mr S's contributions into the relevant funds at the start of the pension. I changed my conclusion because in response to my first provisional decision Aviva referred me back to previous comments it had made and confirmed that the fund switches took place monthly (not annually). So, rather than 15% of a consumer's contributions being moved to the 15 year fund on/around their 59th birthday, 1.25% is moved every month – with the end result being that on/around the consumer's 59th birthday 15% on the contributions will be in the 15 year fund. This clarification was fundamental to my revised conclusion.

Ms S hasn't raised any further issues on this point for me to consider so my conclusion on this point remains as outlined in my second provisional decision. To confirm:

- the 'Choosing your own investment funds' and 'How contributions are invested' booklets outlined how and when Mr S's contributions would move from the 50:50 fund to the 15 year and Sterling funds, and
- I conclude it's more likely than not that Aviva moved the contributions in line with that.

Part 2

Mr S's response to my provisional decision centred on this part of the complaint.

In my first provisional decision I concluded that the documentation Mr S received each year accurately described what would happen to his contributions ie they would move to *lower* risk funds/investments. I reached the same conclusion in my second provisional decision.

To recap, annual review documents were sent to Mr S around April/May each year which said his contributions would be moved into *lower* risk investments in the seven year period before his retirement age. Both the ‘Choosing your own investment funds’ and the ‘How contributions are invested’ booklets from June 2017 show:

- the 50:50 fund as having a risk rating of 5 (which is described as medium to high volatility)
- the 15 year fund as having a risk rating of 4 (which is described as medium volatility) and
- the Sterling fund as having a risk rating of 1 (which is described as lowest volatility).

Aviva regularly reviews fund risk ratings and this sometimes results in them being changed. For example, I’ve seen a booklet dated August 2022 where the risk rating for the 50:50 fund is 6 and the risk rating for the 15 year fund is 5 (so although both ratings increased the 15 year fund was still lower rated).

So in 2017 and 2022 it’s clear that the contributions were moving to lower rated funds.

I’m also aware from documentation Mr S and Aviva have provided that, at times, the 15 year fund had a risk rating of 5 (the same as the 50:50 fund). This, in my view, forms the essence of Mr S’s argument that his contributions weren’t moved to lower risk funds – because they were moved from a fund with a risk rating of 5 to another fund with a risk rating of 5.

As I’ve outlined, in 2017 and 2022 (and potentially other years) the 50:50 fund had a higher risk rating than the 15 year fund as Aviva considered the 50:50 fund to be slightly more volatile. It may well have been that at certain times the difference in volatility narrowed – and narrowed to the point that both funds had the same rating. But I don’t think that automatically means Mr S’s contributions weren’t moved to lower risk funds/investments. I say that for two reasons.

First, I think it’s possible that two funds have different volatility even if they’ve got the same risk rating eg one fund might be at the higher end of ‘5’ such that it’s almost ‘6’ whereas another fund might be at the lower end of ‘5’ such that it’s only just above ‘4’. But, more importantly, when considering this point I’m looking at Mr S’s overall investment portfolio – not just the individual funds. And, even if the two funds were closely matched at times, more and more of Mr S’s overall pension contributions were gradually switched to the (significantly lower rated – and lowest of all) Sterling fund. So, Mr S’s contributions were moved into funds so that, overall, there was a *lower* risk profile.

Accordingly, my conclusion on this point remains as outlined in my provisional decision. To confirm:

- the annual review documents said Mr S’s contributions would be moved into *lower* risk investments, and
- I conclude this wasn’t misleading as the overall risk profile of Mr S’s investment portfolio decreased during the seven year period before his retirement age.

I appreciate Ms S might feel that the overall risk profile didn’t decrease enough. But as I said in my provisional decision Aviva’s hands were tied in this respect and it simply moved the contributions based on the instructions of Mr S’s employer.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 19 December 2024.

Paul Daniel
Ombudsman