Financial Ombudsman Service

The complaint

Mr L complains that Aviva Life Services UK Limited provided misleading information to him about his pensions. In addition, he states that Aviva has mismanaged his funds.

Mr L would now like Aviva to recompense him for his investment loses.

What happened

Mr L holds two money purchase pension plans with Aviva, both relating to benefits he accrued whilst in previous employment. In May 2022, Mr L says he received an annual statement from Aviva about his pensions, and at that time, it showed that his two pots were valued at c£18,000 and c£70,000. The statement also contained information about Aviva's Balanced Lifetime Annuity Investment Programme and Mr L went on to say that he understood from the statement that his monies would be moved into lower risk funds. As a consequence of that information, instead of taking his pension benefits a year early, Mr L says he decided to wait the 12 months until his normal retirement date of 13 July 2023 before extracting his benefits.

A year later, Mr L says he received his June 2023 statement which showed that his monies had fallen in value by around 23%. Surprised at the losses, he contacted Aviva to try and understand why. Aviva sent Mr L a fund fact sheet which provided details of how his monies were invested.

Shortly afterwards, Mr L decided to formally complain to Aviva. In summary, he said that he was surprised at the significant losses that the fund had incurred over the previous year. In addition, he also said:

- The information within the 2022 statement that he received was misleading because it suggested that his monies would be moved into 'lower risk funds'. Mr L explained that they couldn't have been low risk because his money had fallen by around 23%.
- Aviva's strategy of moving his monies from a mixed portfolio to gilts and bonds had effectively put all of his eggs in to one basket. He didn't believe that those funds were low risk as Aviva had made out.
- Aviva had failed to mitigate the market conditions in 2022 by leaving his monies in poorly performing funds.
- Aviva had failed in its duty of care towards him because when the investments had fallen in value, Mr L says that they should have contacted him to set out his options, but they didn't. The first point at which it became apparent that there was a problem was when he saw the 2023 statement.

- Finally, Mr L says that being so close to retirement arguably makes him a vulnerable consumer. He said that Aviva's call centre team weren't helpful or sympathetic towards the situation that he found himself him.

Mr L says that he is now in a position of being burdened with a myriad of factsheets frantically trying to understand what to do next with his pension.

After reviewing Mr L's complaint, Aviva concluded they were satisfied that they'd done nothing wrong. They also said, in summary, that as the majority of the pension was invested in gilts and corporate bonds, they had been negatively impacted by a large number of unusual economic factors that were outside of their control and couldn't have been foreseen. In addition, Aviva said, in summary, that the funds Mr L is invested in were selected by his previous employer, and as such, until Aviva is told otherwise by either him or a financial adviser, they continue to invest the funds in line with what they're told to do and that's because they're not allowed to provide advice to Mr L.

Mr L was unhappy with Aviva's response, so he referred his complaint to this service. In summary, he repeated the same concerns that he had raised with Aviva, principally that he'd been misled by them and that his monies had been mismanaged.

The complaint was then considered by one of our Investigators. She concluded that Aviva hadn't treated Mr L unfairly because the fund literature was, in her opinion, clear. In addition, she also explained that it is Mr L's responsibility, not Aviva's, to decide what investments his monies are invested in and if he didn't want his savings invested in gilts and corporate bonds, it was down to him to let Aviva know.

Mr L, however, disagreed with our Investigator's findings. In summary, he said his complaint was always about believing he'd been misled by Aviva. He went on to say that he'd based his retirement plans on documentation that Aviva had provided which turned out to be inaccurate. Mr L explained that whilst he accepted his funds wouldn't rise to any extent, he didn't expect to suffer the significant losses that he'd seen. He also didn't believe the risks associated with the funds were made clear to him by Aviva. Mr L went on to explain that he still didn't believe Aviva had communicated with him as effectively as they could have done – he felt their paperwork was misleading.

Our Investigator was not persuaded to change her view as she didn't believe that Mr L had presented any new arguments that she'd not already considered or responded to. Unhappy with that outcome, Mr L then asked the Investigator to pass the case to an Ombudsman to review that outcome.

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 have summarised this complaint in less detail than Mr L has done and I've done so using my own words. The purpose of my decision isn't to address every single point raised by all of the parties involved. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied that I don't need to comment on every individual argument to be able to reach what I think is the right outcome. No discourtesy is intended by this; our rules allow me to do this and it simply reflects the informal nature of our service as a free alternative to the courts. Instead, I will focus on what I find to be the key issue here which is whether Aviva's literature was unclear and whether they have mismanaged Mr L's monies.

I can imagine how concerned Mr L must have been in seeing the value of his pension fund fall in value as he neared taking his benefits in July 2023. Losing money at any time can be worrisome, and that's even more so when nearing retirement. But, having carefully considered both sets of submissions, I'm broadly in agreement with our Investigator and for largely the same reasons – and as such, I am not upholding Mr L's complaint. And, whilst I fully appreciate that Mr L will be disappointed by my decision, I'll explain why below.

It would seem that both of Mr L's Aviva pension pots were built up from his time at previous employers. It's important to note here that the funds within his pension were selected not by Aviva, but by Mr L's former employers. Typically, what tends to happen is that when an employer sets up a scheme, they, along with their financial advisers select a set of funds which they feel would be broadly suitable for most employees (and don't take account of the individual circumstances of each employee). But importantly, the option exists for each employee to alter the 'default' fund their monies were being placed into to suit their own needs.

I've looked closely at the underlying investments within Mr L's plan and it seems his previous employers selected an option called 'lifestyling', which is fairly common amongst many employer based schemes. This is where investments within the pension plan are gradually moved into what are considered (in normal times) lower risk funds, such as fixed interest and gilt funds, as the scheme member approaches their selected retirement date. The result is that when the member wants to start taking benefits upon retirement, their pension is invested largely in a mix of investments which are less exposed to stock market volatility but still offer some growth potential. But importantly, this approach doesn't remove all of the risks and that's because those fixed interest funds are impacted by changes in interest rates and other market factors. As interest rates rise, as they have done on a number of occasions over the last two to three years, a fall in the value of those fixed interest funds is then often seen.

But importantly, at the same time there will typically be an increase in annuity rates (an annuity is a product that provides the consumer with a guaranteed income for life in exchange for their pension lump sum). So, although Mr L's fund value had fallen, its annuity purchasing power may appreciate. This is different to a loss that might be incurred in a higher risk fund when annuity rates might be falling. Obviously, that would only be beneficial if Mr L was taking a guaranteed income rather than accessing his monies flexibly.

I also think that it's important to acknowledge that Aviva have no control over how investment markets perform and unfortunately, Mr L's pension, like those of many other consumers, has been impacted by significant world events. And, whilst I can consider complaints about investment performance, in most instances, I would need to see evidence that Aviva had done something wrong and I can't just rely on actual or perceived poor performance. That's because, even if the fund has underperformed compared to the rest of the market, we don't usually think this proves the fund was mismanaged. Many consumers have seen the value of their pension funds fall over the last 24 months given the economic conditions not just across the UK, but wider financial markets too. So to be clear, this isn't just a Aviva issue, and it's something many other consumers are having to face at other businesses too.

I've looked carefully at three years' worth of annual statements that Aviva provided to Mr L. The statements all provide clear warnings that the benefits from the plan aren't guaranteed and that Mr L should regularly review his investments to ensure that they're on track to meet his objectives. They also highlight that if Mr L is in any doubt about how his pension is being managed, he should contact them, or importantly, speak to a financial adviser. So, I'm satisfied that Aviva were indicating the need for Mr L to start considering his options and this can be seen as early as the June 2019 statement.

In his complaint, Mr L says the statement that Aviva sent to him is misleading because the text suggested his monies weren't at risk. He went on to say that this influenced his decision to defer taking his benefits for another year. However, I don't agree that the wording about the lifetime investment programme (which is simply Aviva's approach to 'lifestyling' and how Mr L's monies were being invested) is misleading. Mr L states that he concluded from the following text that whilst he wouldn't expect to make large gains on his pension, his monies would be largely protected from losses: "*As part of the investment programme, your investment will be moved into lower risk funds during the 5 years before age 75 or your selected retirement age if lower. This approach gives your plan more potential in its early years while helping to reduce the effects of any dramatic falls in the stock market in the later years when your plan has less time to recover".* However, the same paragraph then goes on to state: "*Please note there is no guarantee that the strategy will prove beneficial to your pension fund*". It also states: "*To help you consider your options we strongly recommend that you take financial advice*". It then states that there are disadvantages with the Lifetime investment programme which are: "*There is no guarantee that the strategy will prove beneficial to your pension fund"*, therefore repeating the earlier warning. *"The value of your investments, even in lower risk funds, can fall as well as rise and the value of your pension fund is not guaranteed. Taking your retirement benefits earlier or later than planned may have an impact on your investment programme, and may mean that it is no longer suitable for your individual circumstances".* Those warnings were repeated in all of Mr L's statements.

So, despite what Mr L has said about his monies not being at risk of falling in the lower risk funds, I am satisfied that Aviva have made it clear in their communications that they offered no warranties about either the lifestyling investment approach taken or the fact that the consumer's monies could not fall beyond a certain level. I'm also of the opinion that their explanation of how the approach works, would be understood by most consumers who had limited knowledge of pensions and investments, so I'm not persuaded that he was misled by Aviva on this point.

Allied to this, it appears that Mr L wasn't paying Aviva to provide him with any financial advice. As such, their primary responsibility was to manage his pension to his selected fund and risk choice – and from what I can see, they've done just that. Mr L has said that Aviva should have been more proactive about how his monies were invested and moved his funds out of the gilts and corporate bonds, when markets started reacting in the way that they did. That's because, Mr L says, Aviva were putting all of his 'eggs in one basket'. However, even if Aviva had the permission to move his monies into other investments, there was no guarantee that alternative fund would have performed any differently than his existing selection, given the unique market conditions that have been experienced. Importantly, there's no such thing as a zero risk fund because even cash funds are at risk of being eroded by inflation.

It's important to note here that Aviva *didn't* have the permission to move Mr L's monies into other investments; if Mr L wanted his funds managed in an alternate manner, he would've needed to have instructed Aviva to do so. Aviva's role is to manage the money in line with the risk profile and objectives of the fund until they've been specifically told to do so otherwise by the plan holder or their financial adviser. Had Mr L wanted personalised guidance on whether the funds he was invested in were appropriate for his circumstances or whether, as he says, his money should've been moved into something else, he would've needed to have paid for either a financial adviser to provide that guidance to him (on which fund he should move his monies to) or sought fact-based information from Aviva.

The costs associated with Mr L's plan covered the management of the underlying monies and a charge for the wrapper (or plan) that his monies are sat in. Mr L wanted Aviva to review his investments and feels it mismanaged his retirement fund by failing to do so – but

Aviva is not Mr L's financial advisor and they simply act on the instructions he provides. It isn't for Aviva to ensure that any investment decisions are suitable for Mr L's needs – those were essentially decisions Mr L needed to make for himself. Despite what Mr L has explained, the annual management fees associated with the fund do not extend to Aviva provided tailored guidance to him; they only cover the cost of running the fund to the fund's very specific mandate.

Mr L says that Aviva failed in its duty of care towards him because when the investments within his pension had fallen in value, he says that they should have contacted him to set out his options, but they didn't. However, despite what Mr L might think, that isn't Aviva's responsibility. Aviva aren't there to advise Mr L on what to do in times of difficult economic conditions or point out when his pension had gone down in value by a certain amount; their primary responsibility is to act as the custodian of his pension monies and take direction from him on how he wants those monies invested. That specific responsibility would typically fall on a financial adviser for which Mr L would have to pay an additional fee. Mr L has explained that he only gained access to his pension online in June 2023, so he wasn't able to keep track of his funds via Aviva's portal. Despite that, he did have access to their telephone helpline which could have kept him abreast of how his funds were performing and that helpline was signposted in the statements that Aviva sent to him, so I'm satisfied that Mr L didn't need to wait until July 2023 to find out the value of his fund.

I have seen that Aviva's website provides comprehensive information for its consumers about the range of funds and the risks associated with them that are available, had Mr L not wished to go to the expense of paying for an adviser to direct him. Allied to this, Mr L was regularly made aware of the importance of seeking out advice. The regulator sets out the timing and content of the regular statements that need to be issued to pension investors. Mr L has confirmed that Aviva did provide regular statements to him, which highlighted within them warnings that he should review the ongoing suitability of his investments to ensure they remained appropriate for his needs.

Mr L says that being so close to retirement arguably makes him a vulnerable consumer. He said that Aviva's call centre team weren't helpful or sympathetic towards the situation that he found himself him. I've listened to the two calls that Mr L and then his daughter had with Aviva on 15 and 16 June 2023 respectively. As I've already explained, I don't doubt for a moment how upset Mr L must have been when he saw his 2023 statement and the losses that had followed since the previous year's statement, and I could very much sense Mr L's alarm from the conversation that he had with Aviva. However, beyond explaining what his options were, there wasn't a great deal more that Aviva could do.

I'm of the view that Aviva's call handlers on both 15 and 16 June 2023 were courteous and respectful to both Mr L and his daughter throughout the discussions. But, I well suspect given the losses that Mr L had suffered and the closeness of his intended retirement point, it's unlikely that Aviva would ever have been able to put Mr L's mind at rest given the situation that he found himself in.

I think that Aviva has met its obligations in the information it provided to Mr L and in carrying out the investment strategy set with regard to the particular funds that he has invested in. So, whilst I appreciate that my decision will be disappointing for Mr L, I don't agree that Aviva has treated him unfairly or done anything wrong. Therefore, I don't uphold his complaint.

My final decision

I’m not upholding Mr L’s complaint and as such, I do not require Aviva Life Services UK Limited to take any further action.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 7 March 2024.

Simon Fox
Ombudsman