

The complaint

Mr A has complained that Aviva Life & Pensions UK Limited has made changes which restrict the type of security in which he's able to invest within his workplace pension plan which it administers.

What happened

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

In 2017, Mr M joined his workplace pension, administered by Aviva.

In 2023, Aviva introduced a new "Baseline Exclusion Policy". This policy excluded some companies it was invested with whose activities didn't meet its new policy, such as coal production, tobacco and weapons/arms production. The policy was also referred to as involving Aviva's ESG (environmental, social, and corporate governance strategy).

In August 2023, Aviva sent letters to its customers whose funds would be impacted by the new policy. The letter said the following:

"Your fund(s) has been designed to replicate the performance of an index or benchmark. Going forwards the benchmark on your fund(s) will change, and your fund(s) will begin to track a custom benchmark which will exclude certain companies and sectors.

...there may be some one-off costs involved in these changes which are being paid from the funds. It is estimated that these one-off costs will be 0.04% of the value of your fund."

The letter confirmed that, if Mr M was happy with the changes, he didn't need to do anything. If he wasn't, he could switch funds.

My understanding is Mr M telephoned Aviva to raise his concerns with the proposed changes. Aviva issued its final response letter to his concerns on 1 November 2023. Aviva didn't uphold the complaint, and in summary, said the following:

- The terms and conditions state funds can be withdrawn or changed.
- Some sectors and activities didn't align with Aviva's Responsible Investment Approach, and therefore these had been removed.
- Aviva maintained the changes were in the best interests of its customers, but alternative action could be taken if a member was unhappy with the decision.

Mr M had a further telephone call with Aviva (also on 1 November 2023) to raise further points. He said the following:

- He didn't feel the changes would improve investment returns and he was unhappy at being forced to accept the changes.

- Mr M felt the regulator of the industry should review how Aviva makes investment decisions on behalf of its customers.
- He was unhappy with the option of opting out of his company pension so he could make his own changes to his pension.

Aviva responded to these points on 3 November 2023. Its decision remained unchanged and it declined to uphold the complaint. Aviva said the following:

“It remains that should you chose to switch to another provider to manage your investment funds it cannot be guaranteed that over time another provider may not similarly introduce changes arising from BEP and ESG considerations that you may too disagree with...”

... Whilst future investment returns are of course uncertain and cannot be predicted due to the complex and dynamic nature of financial markets it is our belief that these companies will face increasing pressure from regulators and investors over the long term and that excluding them from our funds reduces stranded asset risk for our customers. We, therefore, believe these changes are in the best interests of customers over the long term...

... Your retirement plan allows you access to many of Aviva’s alternative funds, however, there are none that perfectly replicate the original tracker fund that has since changed and about which you are complaining...

... Aviva is able to change the funds and does not require consent. The Terms and Conditions of the scheme, attached, allow Aviva to make fund changes.”

Unhappy with this, Mr M referred his complaint to this service.

Our investigator considered the matter, but didn’t think the complaint should be upheld. She said the following in summary:

- She noted that the terms and conditions for Mr M’s plan had a section entitled “Funds used for this policy”, which said the following:

“At all times the assets and units of all funds belong to us. We use them to work out the benefits to be provided by this policy.”

And also:

“We can close or merge any existing funds and can change the number and type of funds available. If this affects your policy... We’ll tell you at least 30 days in advance unless external factors beyond our control mean that only a shorter notice period is possible.”

- The investigator therefore considered that Aviva was entitled to make the changes it had to its funds.
- Furthermore, she didn’t think that the changes were unreasonable. Aviva had explained that the changes were implemented having been considered by its governance team – which was a dedicated team of analysts which was responsible for the range of funds offered by Aviva, from selection to ongoing monitoring.
- The investigator said that she understood that Mr M may not be happy with the charges which were being passed on, especially as he hadn’t requested the change. But this was a small charge based on only a proportion of the funds from which Aviva

was disinvesting. And these changes were permitted, as set out in the terms and conditions.

- Overall, Aviva hadn't acted unfairly or unreasonably. It had given customers a three month notice period with the option to switch funds and explained how to do so. It was then up to individual members to decide how to best proceed.

Mr M disagreed, however, saying the following in summary:

- There was no practical alternative for him here if he disagreed with Aviva's proposed action. Aviva didn't provide alternative funds which wouldn't be subject to the new rules, and would allow investors to have the same exposure that they had previously enjoyed.
- He wasn't able to control the pension provider chosen by his employer.
- Salary sacrifice was the most effective and tax efficient way of contribution to a pension for him.
- Moving his pension pot away from Aviva would be a logistically problematic and would incur addition costs, including that for financial advice and transaction costs.
- He would therefore either need to accept Aviva imposing its ethical considerations in his pension investments or accept the costs of moving his pension plan to another provider.
- The current rules therefore granted pension providers a captive client base which had substantial barriers to moving away from the employer's chosen pension provider. He had no real freedom of choice in his pension provider and so it was unacceptable for Aviva to impose its ethical considerations on that captive customer base.

As agreement couldn't be reached on the outcome, it's been referred to me for 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.

And having done so, I've reached the same overall conclusions as the investigator, and for the same reasons.

There isn't much I consider I can meaningfully add to what the investigator has already said. Aviva is entitled to close, merge or change the makeup of its investment funds in accordance with the terms and conditions of the plan and I'm satisfied that it acted fairly in giving advance notice of its intended course of action in moving away from particular types on investment.

My further view is that it's also provided a robust rationale for its decision, to the extent that not only was investment in such areas contrary to its ESG considerations, but it also believed that the companies involved might face increasing pressure from regulators and investors over the long term, and that excluding them from its funds reduced the "stranded asset" risk for its customers.

I've noted what Mr M has said about the captive customer base due to the logistical and

financial hurdles which he (and others) would face in moving his pension plan to another provider, but I think this is then a conversation which might be better held with his employer. The latter can then make the decision as to whether its preference is to have the pension funds for its employees administered by a different provider.

But I would also caveat this by saying that other providers may also be adopting the same ESG stance along with harbouring similar concerns about potentially “stranded assets”.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 August 2024.

Philip Miller
Ombudsman