

The complaint

Mr H complains about the poor investment performance of his with profit bonds and charges applied to the account held with Aviva Life & Pensions UK Limited.

What happened

Mr H complains that the bonds he held with Aviva had extremely poor investment performance. Having surrendered the bonds, he now wants an explanation of the charges applied since 3 May 2021.

Mr H also raised concerns around the use of his personal data. He says, in a call on 18 June 2024, he explicitly declined to provide his email address to protect the security of his personal data. Despite this, he says he received a text message from Aviva on 21 June 2024 in relation to a transfer of funds to his bank account which he says he has never requested. He says this was inappropriate and was sent over an unsecure network, so he complained to Aviva in May 2024.

Aviva sent their final response letter in July 2024 and didn't uphold the complaint, so Mr H brought his complaint to this service. He is seeking full resolution to all aspects of his outstanding complaint points, the charges to his account refunded, and to be provided fair and reasonable monetary compensation for the stress, upset and disruption to his personal and financial affairs.

An investigator here considered Mr H's complaint and didn't think it should be upheld. She said, performance of investments is not something we typically look at, she didn't think the charges were unfair, and that these had been outlined in the terms and conditions of the account. She also didn't think Aviva were wrong to contact him via text message as they were not told he did not want to be contacted by this method.

As Mr H didn't agree with the complaint outcome, it has come to me for a decision.

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've assessed all information available from both parties and having done so, I've reached the conclusion that I will not be upholding this complaint and for broadly the same reasons as the investigator.

Mr H's complaint about the performance of his with profit bonds is not something we would typically investigate when dealing with complaints because the bonds consist of several investments and their performance is subject to market movement. The bond typically invests in a diverse range of funds and so market fluctuations are not uncommon. These are factors that are beyond the control of Aviva and so it wouldn't be fair to hold them responsible for any negative turn in the market. For these reasons, it would be unlikely that any guarantees would be given as to what the performance or returns would be, and I have not seen any such evidence here.

The surrender value of the policy and the final sum paid would be affected by changes to the final bonus and market value adjustments. The bonuses don't often reflect stock market performance because they are not calculated in the same way as other investment funds. Here, the final bonus is not applied in equal proportion of the profits of the fund, and this is only part of the bonus considerations. This is because the fund managers at their own discretion can hold back bonuses so they can be added later when markets may be underperforming. As such it would be for Aviva to decide what the bonus should be, a commercial decision they are entitled to take. These are detailed in the terms and conditions document on page 2 and 3.

The charges added to the account will also affect the value of the final bonus and surrender value. It is expected that charges will be applied to investments, and these are clearly detailed on page 5 of the terms and conditions of the account and applied accordingly. Aviva have already explained this. The charges are applied as a percentage of the fund, as such the charges can fluctuate with the fund value. This means giving a specific figure for charges in advance wouldn't be possible.

Mr H has invested in many bonds with Aviva over several years. It is clear, he was aware that charges would be applied, and I think the information already provided reasonably explains the charges in this situation. It is also evident that had the option to make changes to the bonds if he was not satisfied with the performance of these. Overall, I am persuaded he was made aware of the charges and understood the performance considerations, but he chose to continue with these as they are. I've seen no evidence to suggest Aviva breached the terms and conditions of the bond.

I've also considered Mr H's concerns about the lack of data protection and his dissatisfaction at his personal mobile number being used when he received a text message from Aviva confirming his surrender payment was completed. They confirmed his contact details at each point when communicating with him to ensure these details were correct. He had previously given Aviva his personal mobile number and there was no specific instruction not to use this mobile number until a complaint was raised more recently.

As to the purpose for which it was used, Aviva's privacy policy outlines the purpose for which the mobile number will be used. Delivering a message via email or text is generally considered an efficient and quick form of communication and a text message from a bank is not uncommon practice. Whilst I do take on board Mr H's concerns, I am re-assured that any risk has been mitigated by the fact that no policy specific information has been detailed in this message.

It is not my role to tell a business how it should operate, and if the business is satisfied that there has been no breach of their policies it is not for me to tell them to change their policy. Whilst I note Mr H's concerns, I do think Aviva's explanation is reasonable. Upon review I am satisfied that no further action is necessary. If Mr H remains dissatisfied with Aviva's use of his mobile phone number, he can request Aviva to remove this (if he hasn't done so already). He can also refer his complaint to the Information Commissioners Office (ICO).

My final decision

For the reasons given above, I do not uphold this complaint against Aviva Life & Pensions UK Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 31 March 2025.

Naima Abdul-Rasool
Ombudsman