

Ombudsman's Determination

Applicant	Mr S
Scheme	Aviva Personal Pension Plan (the Plan)
Respondent	Aviva

Outcome

1. I do not uphold Mr S' complaint and no further action is required by Aviva.

Complaint summary

2. Mr S has complained that:-
 - Aviva's transfer exit fees are unreasonable and unfair.
 - Aviva claims on its website that it does not charge exit fees, this is misleading.
 - Aviva has failed to provide a satisfactory response to his request for a detailed explanation of how it calculated the exit fee applied to his transfer value (the **Exit Penalty**).

Background information, including submissions from the parties

3. On 1 January 1997, Mr S took out his pension policy (the **Policy**), which was held under the Plan.
4. The Plan is a group personal pension plan. It was arranged by Mr S' former employer, Karl Storz Endoscopy (UK) Limited (the **Company**).
5. Sun Life Assurance Society plc, (**Sun Life**), was the pension provider at the time Mr S took out the Policy.
6. The Policy was acquired by Friends Life which subsequently became part of Aviva.
7. The Pensions Ombudsman's Office (**TPO's Office**) obtained a copy of the original Policy provisions (the **Provisions**) from the Company.

8. Section 1.10.4 of the Provisions, (**Section 1.10.4**), describes the terms for the provision of retirement benefits, or transfer to another scheme, before the Selected Retirement Date (**SRD**). It provides that the percentage of “Capital Units” (the **Percentage**) will be calculated by Sun Life at its sole discretion. This will allow for the loss of the “Fund Management and Additional Fund Management Charge” which would otherwise have accrued to Sun Life, during the period between the date of the encashment of the Capital Units and the SRD.
9. Section 1.10.14 states that where the period between the date of the encashment and the SRD is 15 years or less, the Percentage is obtained from the table included in Section 1.10.14 (the **Table**).
10. Section 4.4.1 of the Friends Life Personal Pension Policy Provisions dated April 2006 contains similar wording to Section 1.10.14. It also contains a table showing the percentages of the Capita Units payable on encashment, where the date of encashment of those units and the SRD is 15 years or less.
11. The Frequently Asked Questions (**FAQ**) published on Aviva’s website, indicated that generally there are no charges or penalties for transferring to a different pension provider. The FAQ cautioned that this depends on the type of pension plan and its terms and conditions.
12. On 26 June 2019, Aviva received a letter of authority from Mr S to disclose information in connection with a possible transfer of his benefits from the Policy to PensionBee (the **Provider**).
13. On 11 July 2019, Aviva issued information on the Policy to the Provider. This included a fund value, a transfer value, and a breakdown of the transfer value.
14. On 15 July 2019, Aviva received a telephone call from the Provider. Aviva quoted a fund value of £20,694.09 and a transfer value of £17,456.63. Mr S did not make any enquiries concerning any exit penalties at the time.
15. On 17 July 2019, Aviva received Mr S’ application to transfer.
16. On 22 July 2019, Aviva paid £17,614.61 to the Provider. Aviva wrote to Mr S to confirm this.
17. On 1 August 2019, Mr S complained to Aviva. He highlighted the following statement, (the **Statement**), which he said was published on Aviva’s website:

“If you are transferring to, or away from, the **Aviva Pension**, we won’t make a charge but other providers may do so [emphasis added].”
18. Mr S asked for an explanation of how the Exit Penalty had been calculated and “how and when” the relevant terms and conditions had been “changed or modified”.
19. Mr S queried why Aviva had chosen not to honour the terms of an “Aviva Pension”.

20. On 14 August 2019, Aviva issued its response to Mr S' complaint. Aviva advised that the exit penalties were calculated as a percentage of the "Capital Units" and were designed to recoup the costs involved in setting up pension plans.
21. Aviva explained that the terms of the Plan had remained unchanged, including those relating to the Exit Penalty.
22. Aviva said it had been unable to find the Statement on its website. Aviva explained that the Statement may have been in respect of the Aviva personal pension plan that it currently had on the market; it did not apply to all pension plans being administered by Aviva.
23. On 20 August 2019, Mr S complained that Aviva had failed to provide a full explanation of how it had calculated and arrived at the Exit Penalty. He asked for a breakdown of how it had reached such an excessive amount. He also asked Aviva to pay the Exit Penalty to the Provider.
24. Mr S subsequently complained to TPO's Office on 5 September 2019.
25. On 5 November 2019, Aviva wrote to Mr S and apologised if he considered that Aviva had not fully addressed his concerns. Aviva said it had enclosed a statement showing his unit holdings at the date of the transfer.
26. Aviva explained that where an exit penalty applied, it is calculated based on the percentage of the Capital Units that would be included in the transfer payment. The percentage was based on the number of years remaining to the SRD. Aviva advised that in Mr S' case, this amounted to approximately five years and eight months at the date of the transfer. So approximately 79.1% of the capital units were available on encashment.
27. The Table shows that where there is five years remaining to SRD, 81% of the Capital Units are payable on encashment. Where there is six years remaining to SRD, 77.7% of the Capital Units are payable on encashment.
28. The Table, displayed in Section 4.4.1 of the Friends Life Personal Pension Policy Provisions, similarly shows that where there is five years remaining to SRD, 81% of the Capital Units are payable on encashment. Where there is six years remaining to SRD, 77.7% of the Capital Units are payable on encashment.

Summary of Mr S' position

29. Mr S' main submissions are outlined below:-
 - He has suffered a financial loss equivalent to the Exit Penalty. That loss amounts to £3,237.46. Aviva should pay an equivalent amount in redress to his pension plan with the Provider.
 - He would like to see all such excessive exit fees made illegal. This would prevent others from being penalised in such an "unreasonable" manner.

- The original Policy was not sold to him personally. He did not see the terms and conditions of the Policy, or the terms in respect of the high early exit penalties.
- The information on exit fees displayed in the FAQ currently published on Aviva's website, is very similar to the information displayed in the FAQ that he read around the time of the transfer.
- The FAQ did not mention exorbitant fees. It indicated that there were no charges or penalties for transferring to another pension provider. It stated that this depends on the type of pension held by the policyholder.
- Aviva made no attempt to contact him or to fully explain the calculation of the Exit Penalty. Aviva also failed to explain what appears to be a sliding scale based on the years remaining to SRD.
- On 20 August 2019, he asked Aviva for further clarification on the Exit Penalty. He expected a detailed breakdown of how the 20.9% Exit Penalty was calculated, based on the precise value of his pension pot at the date of the transfer. However, he did not receive a [detailed] response.
- Aviva should have provided a full explanation of the calculation of the Exit Penalty and how the amount of the Exit Penalty would change as he approached his SRD. This would have enabled him to make an informed decision before transferring his pension.

Aviva's position

30. Aviva's main submissions are outlined below:-

- The Exit Penalty was applied in line with the terms and conditions of the Policy. The Policy was a former "heritage" Friends Life policy. It became an Aviva managed policy following the acquisition of Friends Life by Aviva. The original terms and conditions remained in force following the acquisition.
- Aviva is unable to access a copy of the booklet detailing the original terms and conditions of the Policy. Aviva's document storage facility is currently off-limits due to COVID-19.
- The section in the current booklet relating to Capita Unit charges is the same across all Aviva's products as the function is identical: to recoup the loss of the expected standard 4.5% annual management charges on Capital units to SRD.

Adjudicator's Opinion

31. Mr S' complaint was considered by one of our Adjudicators who concluded that no further action was required by Aviva. The Adjudicator's findings are summarised below:-
- The Adjudicator said that she was not aware of legislation that prevents Aviva from imposing the charges that have been applied in this case. In the circumstances, she was not convinced that the Ombudsman would direct that Aviva acts outside the provisions of the Policy and refund the Exit Penalty.
 - The Adjudicator considered that the percentage of Capital Units available on encashment, are written into the provisions that apply to the Policy. Although the Policy is now with Friends Life, this does not change the provisions under which the Policy operated.
 - The Adjudicator acknowledged that the FAQ published on Aviva's website stated that Aviva "generally" did not apply charges or penalties in respect of transfers to an alternative pension provider. The Adjudicator highlighted that the FAQ also stated that this would depend on the type of pension plan and its terms and conditions.
 - The Adjudicator said that even if she were to accept that Aviva did not make the position sufficiently clear in the FAQ, this would not materially change the outcome in the circumstances.
 - The Adjudicator noted that Aviva made the Provider aware on 15 July 2019, that an exit penalty would apply should Mr S proceed with the transfer.
 - The Adjudicator said that Aviva had provided a satisfactory explanation on 5 November 2019, of how the Exit Penalty was calculated. Albeit belatedly.
32. Mr S did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr S provided his further comments which do not change the outcome. I agree with the Adjudicator's view and note the additional points raised by Mr S:-
- Mr S has asked that I determine his complaint. Mr S says he is not a pensions or legal expert. Consequently, he cannot dispute the Adjudicator's view.
 - Mr S says he appreciates that this has no bearing on his case, nonetheless he made eight separate transfers to the Provider in 2019. He was charged a maximum fee of £20 by the other pension providers. Furthermore, his other pensions had performed far better than his pension under the Plan.
 - Mr S says it is evident that his pension with Sun Life, eventually taken over by Aviva, made significant money for individuals and/or companies other than him, possibly due to unreasonable terms and conditions. Irrespective of the outcome of

his complaint, he is confident that I would be seeking to prevent what he considers to be “disgraceful” practices by “unscrupulous” companies.

Ombudsman’s decision

33. In the absence of a regulatory requirement to allow Mr S to transfer without penalty, the issue is whether Aviva is prevented from imposing the Exit Penalty under the Policy, which was originally with Sun Life.
34. Mr S would have been expected to read the provisions relating to the Policy before taking the decision to join the Plan. It would have been open to him to make enquiries and/or seek appropriate independent financial advice before taking out the Policy with Sun Life.
35. The responsibility for ensuring that Mr S had the relevant information to make an informed decision concerning whether to take out the Policy lay with the Company, the party who arranged the Policy on his behalf.
36. I am satisfied that the documentation my Office obtained from the Company contain the original policy provisions. There is nothing to suggest that the Policy provisions, relating to the exit penalties, were superseded to remove the provider’s sole discretion to calculate the percentage of Capital Units available on early encashment.
37. Regarding the FAQ, I do not agree that the information on exit penalties contained in the FAQ was misleading. The caveat Aviva included in the FAQ, alerted Mr S to the possibility that an exit penalty may apply. Before proceeding with the transfer, Mr S should have contacted Aviva for confirmation on whether any exit penalties would apply in his case.
38. Aside from the caveat contained in the FAQ, I am mindful that Aviva made the Provider aware of the position regarding the Exit Penalty on 15 July 2019, before Mr S’ application to transfer.
39. In conclusion, I am satisfied that the Exit Penalty was imposed in accordance with the applicable provisions. I find that Aviva provided a sufficiently detailed explanation of how the Exit Penalty was calculated in its letter dated 5 November 2019.
40. I do not uphold the complaint.

Anthony Arter

Pensions Ombudsman
8 January 2021