Ombudsman's Determination

Applicant	Mr E
Scheme	CSM (United Kingdom) Limited Generation Group Pension Scheme (**the Scheme**)
Respondent	Aviva

Outcome

1. I agree that Mr E's complaint should be partly upheld. To put matters right for the part that is upheld, Aviva shall:

   - switch the assets of Mr E's policy back to the correct fund; and
   - calculate any financial loss that Mr E has suffered as a result of the erroneous switch, and provide Mr E with a copy of its calculations, as set out below in the Directions section (paragraphs 31-32).

Complaint summary

2. Mr E's complaint is that Aviva erroneously switched his fund which caused him to suffer a financial loss.

Background information, including submissions from the parties

3. Mr E was a member of the Scheme, a defined contribution arrangement, through his employment with CSM Bakery Solutions. Mr E's policy (**the Policy**) was invested in the BlackRock (50:50) Global Equity Index Tracker (**the BlackRock fund**).

4. In April 2015, legislation changed and allowed people aged 55 and over flexibility to access their defined contribution pension savings (**pension freedoms**).

5. On 10 July 2019, Mr E received a letter from the Scheme's administrator, Aviva, about changes that were being made to the Scheme:-

   - His employer wanted to implement some changes in light of the pension freedoms.

- It would amend the Scheme’s terms and conditions with effect from 22 October 2019. This would allow it to replace or amend the default funds available under the Scheme as a result of legal or regulatory changes.

- His employer had instructed Aviva to replace the CSM (United Kingdom) Limited Default Lifetime Investment Programme (**the CSM fund**) with effect from 22 October 2019.

- He had opted to make his own investment choices, so the Policy would remain invested in the BlackRock fund.

- There would be a three week blackout period around the time that the changes took place. During this time, it would not be possible to make changes to the Policy.

6. Aviva has said that in September 2019, it identified a potential issue which led it to believe that Mr E may have been invested incorrectly. In summary, it has said that it believed that Mr E may have been incorrectly made a leaver and then reinstated into the CSM fund.

7. Consequently, on 30 September 2019, Aviva wrote to Mr E and said:-

   - At the request of his employer, the Policy had been added to the CSM (United Kingdom) Limited Default profile, backdated to 11 June 2016.

   - It was due to re-balance Mr E’s funds on 11 June 2016 to bring them in line with the CSM (United Kingdom) Limited Default profile.

   - It would send him a letter when it had re-balanced his funds.

   - The Policy would be invested in different funds and these would show on his next statement.

8. Mr E has said that he did not receive this letter when Aviva sent it to him.

9. On 22 October 2019, the Policy was erroneously switched and became invested in My Future Growth FP and My Future Consolidation FP funds which were part of the Lifetime fund.

10. Aviva has confirmed that Mr E did not agree to, or want, his funds to be switched.

11. Mr E had said that in December 2019, he accessed his online account to review the Policy and noticed that it had been switched from the BlackRock fund to the Lifetime fund.

12. In response, Mr E contacted Aviva and has said that it then sent him a letter dated 30 September 2019 that he had not previously received.

13. On 3 January 2020, Mr E raised a complaint and said that the fund switch had inhibited risk and growth potential. He also said that Aviva had benefitted from its error and should:-

- Provide a loss calculation from the date it erroneously switched the Policy into the Lifetime fund.
- Explain how it planned to reinstate the Policy to the correct position had the error not occurred.
- Pay him £250 for the time he had spent making calls and carrying out administration to resolve the issue.

14. On 15 January 2020, Aviva responded to Mr E's complaint. In summary, it said:-

- The Policy was invested in two funds before the erroneous switch:
  - The BlackRock Fund – 20%
  - The Av Multi-Asset Growth Fund FP – 80%
- The relevant team had carried out the calculations that Mr E had requested and the Policy's current value, as a result of the erroneous switch, was £155,849.63. Had the error not occurred, the Policy's current value would be £124,249.36.
- Mr E had not suffered a financial loss, so it did not need to carry out a loss calculation.
- It had provided Mr E with information about fund switching and redirection following his contact with Aviva in December 2019.
- It apologised for any confusion and had arranged for a £100 cheque to be sent to Mr E as an apology.

15. Mr E was unhappy with Aviva's response and said:-

- Aviva had incorrectly stated that the Policy had been 80% invested in the Av Multi-Asset Growth Fund FP since June 2016.
- He would like a breakdown of how Aviva had calculated the Policy values.
- The retrospective switch reduced the Policy value considerably and would have been obvious.
- He had put together a spreadsheet which showed that the Policy value would have been higher had the funds not been switched.
- Aviva should provide a loss calculation and explain how it planned to put him back in the position he would have been in had the error not occurred.

- He believed that £750 was sufficient redress for the inconvenience that he had suffered.

16. Between February and March 2020, Mr E contacted Aviva on a number of occasions for a response and escalated his complaint to the Chief Executive Officer.

17. On 3 April 2020, Aviva responded to Mr E's complaint. It apologised for the delay and said:-

    - It had referred Mr E's submission to the Actuarial Team who:-

        - Considered that, while Mr E may have initially suffered detriment, there was an improvement in the recent performance. It therefore considered that Mr E was in a more favourable position.

        - Had recreated the Policy based on it not being switched to the Lifetime fund, and compared it to the value as of 22 December 2019. It found that the Policy was undervalued by £8,600.

        - Calculated that, based on data to 27 March 2020, the Policy had gained £13,000 in value compared to if it had remained in the BlackRock fund. This was because the error had shielded him from some of the current economic impact.

    - Mr E could remain invested in the Lifetime fund or transfer his gain to his chosen fund.

    - It increased its offer of compensation to £500.

18. Mr E responded to Aviva and said:-

    - He was unhappy with the time that it had taken for Aviva to respond.

    - Aviva had not explained why it referred to the incorrect fund or how it had calculated the values.

    - He did not accept that he had been shielded from market fluctuations.

    - He accepted Aviva's loss calculation of £8,600 and he would make his fund choices after this amount was paid into the Policy. He also requested £750 compensation.

19. On 8 April 2020, Aviva issued an additional response and said:-

    - While his fund position was £8,600 lower than it should have been earlier in the year, it had improved and he was now £13,000 better off.

    - It calculated detriment at, what it referred to, as a rectification date, when comparing the fund values. It would not pay the largest detriment when comparing historical values. For example, had it noticed the error in December 2019, added

£8,600 to the Policy and switched him back to his chosen fund, he would now be in a worse position because the fund had dropped significantly.

- Its offer of £500 was reasonable in the circumstances.

20. Mr E's position:-

- It was not reasonable for Aviva to use 27 March 2020 to compare the Policy value because he did not intend to crystalise his pension pot on that date.
- Aviva had made numerous errors so he was not confident that the £13,000 increase that it had quoted was correct.
- He believes that, based on his calculations, he has suffered more severe investment losses.
- He has not asked for, or received, a payment for the trouble and upset caused. Instead, he would like £750 to compensate him for the time spent dealing with the complaint.
- He has put together a spreadsheet to show the growth the Policy would have received had the erroneous switch not occurred, compared to the growth it received in the incorrect funds.
- Aviva has caused him a great deal of concern and distress.
- He believes that as of 16 April 2021, he had suffered a financial loss of £34,741.
- He has not switched from the Lifetime fund because he was informed that it was not wise to make any changes until the complaint is settled.

21. Aviva's position:-

- It does not dispute the erroneous fund switch on 22 October 2019, which was backdated to 11 June 2016.
- The problem was compounded by incorrect calculations that it performed to reassure Mr E that he had not suffered a financial loss as a result of the erroneous switch.
- The last date that fund comparisons were made was to 27 March 2020. It had included a spreadsheet to show the comparisons.
- Its Actuarial Team:
    - had compiled a spreadsheet for the Pensions Ombudsman (**TPO**) to show the value of the Policy compared to what it would have been had the fund not been switched; and
    - was confident that Mr E was in a better position than he would have been had he remained in his chosen fund.

- Mr E believes that it offered him £8,600 due to the Policy being undervalued. However, it refutes this claim and puts it down to Mr E misinterpreting its email of 3 April 2020.

- It would be complicated to reverse the backdated fund switch because:-

  - It would cause £13,000 detriment to the fund.

  - Its technical department said that the attempt to reverse the switch now might fail and corrupt the Policy.

- It was possible that a hypothetical reversal could be carried out in the test environment in order to gauge what the impact on the Policy might be.

- Mr E could switch his funds to his preferred funds, without having to reverse the erroneous fund switch.

Adjudicator's Opinion

22. Mr E's complaint was considered by one of our Adjudicators who concluded that there had been maladministration. The Adjudicator's findings are summarised below:-

- The erroneous switch amounted to maladministration, which Aviva accepted.

- The Adjudicator noted that Aviva's Actuarial Team had provided calculations to show that the Policy had gained £13,000 in value by being invested in the incorrect fund. However, Mr E believed that as of 16 April 2021, he had suffered a £34,741 loss but did not provide any compelling evidence in support of this assertion.

- The Adjudicator had no reason to doubt Aviva's calculations and, in her opinion, it was for Mr E to prove that these calculations were flawed or incorrect. Simply because Mr E did not agree with the method used by Aviva did not mean that its calculations were flawed.

- In the Adjudicator's opinion, the Policy value initially fell by approximately £8,600 after the erroneous switch but went on to outperform the BlackRock fund. This potentially put Mr E in a better financial position.

- Aviva's comparison was based on rectification of the error on 27 March 2020, when it was in the process of handling Mr E's complaint. This was an arbitrary date and not a crystallisation date as Mr E had suggested.

- Mr E should have taken reasonable steps to mitigate any further loss after Aviva offered him the option to switch back to the BlackRock fund. Any loss after this date was a consequence of market movement rather than maladministration by Aviva.

- Aviva had offered Mr E £500 which was sufficient for the distress and inconvenience that he might have suffered, but it should consider any financial loss that Mr E may have incurred as a result of the erroneous fund switch.

23. Mr E did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr E provided his further comments which do not change the outcome. In summary, he said:-

- He did not trust that Aviva could sort out his pension accurately or fairly.

- Aviva had not provided him with a copy of its Actuarial Team's calculations.

- For some time from February 2014, he was not solely invested in the AV BlackRock 50:50 Global Equity fund so Aviva's calculations were incorrect.

- The onus should not have been on him to take steps to mitigate any further financial loss because Aviva had made the errors.

- He was not seeking to benefit from hindsight or the error. Rather, to resolve the complaint, he wanted his pension to be recalculated accurately based on the current value.

24. Aviva agreed with the Adjudicator's Opinion but explained that, following review, it had come to light that Mr E paid the £500 cheque into this bank account in September 2020. So, it would not look to award him an additional £500.

25. I note the additional comments made by both parties, but I agree with the Adjudicator's findings.

Ombudsman's decision

26. Aviva acknowledges that it incorrectly switched Mr E's investment. The erroneous fund switch constitutes maladministration. So, as maladministration has occurred Aviva should put Mr E back in the position he would have been in had it not erroneously switched the investment fund, the Policy remains invested in the incorrect fund.

27. I accept that Aviva attempted to resolve the matter in March 2020. The result of Aviva's investigation adequately demonstrated that Mr E was in a potentially more advantageous situation than would have been the case had the error not occurred. But Mr E was unhappy with Aviva's decision and was not confident with its calculation method so he referred his complaint to TPO.

28. I also appreciate that, given the errors that had already occurred, Mr E was reluctant to accept Aviva's offer to switch back to the correct fund on 3 April 2020. However, Mr E had a responsibility to take reasonable steps to mitigate avoidable loss. Had he done so, and continued to suffer financial detriment from the maladministration, Aviva would be responsible for compensating Mr E for any loss. As I find that this is not the

case, I do not consider Aviva is liable to compensate Mr E for any market fluctuations that have impacted the Policy while this matter has been ongoing.

29. I also agree with the Adjudicator's assertion that Mr E has not been able to provide any credible evidence that supports his claim that Aviva has not calculated the Policy value correctly.

30. I partly uphold Mr E's complaint.

Directions

31. Within 28 days of this Determination, Aviva shall:-

- switch the assets of the Policy back to the BlackRock fund;
- calculate any financial loss that Mr E has suffered as a result of the erroneous switch up until 27 March 2020 (the date that it previously calculated Mr E's financial loss up until); and
- provide Mr E with a copy of its calculations.

32. If the recalculation shows that there has been a loss, Aviva shall pay any sum owed into the Policy within 28 days.

Anthony Arter CBE

Deputy Pensions Ombudsman
29 August 2023