

Ombudsman's Determination

Applicant	Mr S
Scheme	Bradford & Bingley Staff Pension Scheme (the Scheme)
Respondent	Bradford & Bingley Pensions Limited (the Trustee)

Outcome

1. I do not uphold Mr S' complaint and no further action is required by the Trustee.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr S' complaint concerns the Trustee's failure to provide him with information regarding his Additional Voluntary Contributions (**AVCs**) fund which would indicate its poor performance. Mr S is dissatisfied that the AVCs' investment yield would only cover the annual charges.

Background information, including submissions from the parties

4. Mr S is a member of the Scheme. Mr S is paying AVCs to the Investment Solutions Sterling Liquidity Fund (**the Fund**).
5. On 11 November 2009, the Trustee sent a letter to Mr S informing him that it has agreed to redirect all future deposit based AVCs to the Fund. It also added that:

"If you wish to consider investing in any of the other Investment Solutions fund choices I would be happy to provide full details of all available funds. In the absence of such an enquiry it will be assumed that you wish to proceed with a transfer to the Sterling Liquidity Fund, and this is scheduled to go ahead...We can also supply a summary of the Sterling Liquidity Fund on request...The Scheme's advisers have assessed this Fund and agree that it is a suitable low-risk alternative to the current deposit arrangement".
6. On 17 March 2010, the Trustee sent Mr S a summary of the Fund. It also informed Mr S that there were now very few deposit type AVC arrangements available and the Trustee's decision to transfer the Fund, was taken after a review of the markets by the Trustee's advisers.

7. In April 2012, the Trustee sent Mr S an annual pension statement. He subsequently sent a response to the Scheme expressing dissatisfaction about the poor growth on his Fund over previous four years. He said he would have expected a return of 10%-12%.
8. In May 2012, the Trustee sent Mr S a letter enclosing "Cumulative Performance over a 10 Year F" that shows past performance for the years 2002 to 2011 and a breakdown of the type of funds available within Sterling Investment. The letter said that:

"Whilst the absolute return produced by the Investment Solutions Sterling Liquidity Fund has been very disappointing the enclosed comparator performance information clearly shows that the fund performance has been competitive with comparable funds throughout. Cash and Deposit based funds have all struggled to produce a reasonable level of return against a backdrop of three continuous years of a bank base rate of only 0.5%...you may transfer your funds from the...Fund to any of the other funds managed by Investment Solutions and I enclose a document which summarises the other funds".
9. In February 2017, Mr S raised a formal complaint by invoking the Scheme's two-stage internal dispute resolution procedure (**IDRP**). Mr S' complaint was considered under both stages of the IDRP and the Trustee maintained its stance. The Trustee also added that AVC contracts have become increasingly viewed as legacy products, with the rates of return over the last few years typically falling behind the rates of return earned by the cash funds offered by bundled AVC providers.
10. In January 2017, Mr S raised a further complaint with the Trustee specifically with regard to the poor performance of his Fund and that the Trustee has continued to use this Fund.
11. On 24 February 2017, the Trustee sent Mr S a response under stage one of the IDRP that said:

"As explained in greater detail in the responses to your complaint in 2012...the Trustee carefully considered its options at the time it transferred the AVC funds from Santander to the Sterling Liquidity Fund...The Trustee receives investment advice on an ongoing basis regarding the performance of the Scheme's investments, taking account of the performance of the existing funds, the alternative options available and members' best interests. The Trustee still considers that the Sterling Liquidity Fund is the most suitable investment for the Scheme's AVC funds in the circumstances...It is now possible for you to transfer your AVC benefits from the Scheme to an alternative arrangement, leaving your final salary benefits in the Scheme".
12. Mr S appealed against the Trustee's decision and invoked stage two of the IDRP.
13. On 18 April 2017, the Trustee sent Mr S a response under stage two of the IDRP that said:

“Members are encouraged to obtain their own professional advice as the Trustee is prohibited from giving advice...returns from...Fund remain low due to the current low risk environment, however performance had been in line with expectations over one and three year periods and ahead of benchmark over five years. Importantly, advice concludes that the range of AVC funds remain suitable and notes that members have the means to reallocate assets between Funds. The Trustee will of course continue to keep the suitability of this fund under review on a regular basis, and to take appropriate investment advice”.

14. Mr S brought the complaint to this Office in May 2017.

Adjudicator’s Opinion

15. Mr S’ complaint was considered by one of our Adjudicators who concluded that no further action was required by the Trustee. The Adjudicator’s findings are summarised briefly below:-

- Mr S maintains that the Trustee failed to inform him of the potential poor performance of his Fund. The Adjudicator noted that the Trustee provided Mr S with the relevant information in regards to the Fund with the letter dated 12 May 2012. The documents show the description of each available fund to choose from and the performance graph. It is for the members to decide whether they wish to pay or continue to pay AVCs into any of the available funds.
- Mr S says that he expected a return on his Fund of 10%-12%. However, the asset allocation of the Fund, Mr S invested in, is cash and deposit based. The financial regulator’s prescribed rates to be used on pension illustrations for these types of funds are 5%, 7% and 9% respectively. So, the Adjudicator believed that Mr S’ expectation is significantly at odds with the regulator’s one.
- The Adjudicator was satisfied that the Trustee provided a proper explanation regarding the choice of the Fund and had answered all Mr S’ concerns appropriately. The Trustee expressed its disappointment in the performance of the Fund but as explained throughout the IDRP, the Fund has performed as well as other cash funds. It also reiterated to Mr S that the Fund has not experienced any loss of capital despite the unusual financial climate that has applied over recent years.
- The Adjudicator noted that the Trustee also offered Mr S the option to transfer his AVC benefits from the Scheme to an alternative arrangement, leaving his final salary benefits in the Scheme, however Mr S chose to remain in the Fund. The Adjudicator therefore did not uphold Mr S’ complaint.

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16. 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 Opinion and I will therefore only respond to the key points made by Mr S for completeness.
17. Mr S asserts that the first time he received a fact sheet about his Fund was in the summer of 2016 which triggered his complaint.
18. Mr S did not dispute the availability of other funds but contends that his Fund achieved no growth. He says he has been waiting for his complaint to be resolved before making a decision to switch the Fund.

Ombudsman's decision

19. Mr S raised questions in regards to his Fund's performance in 2012. I find that the Trustee had answered his concerns properly and provided sufficient explanation about its decision to move the AVCs Fund.
20. I am satisfied that the Trustee provided Mr S with sufficient information to enable him to select the Fund of his choice. As admitted by Mr S, he did not dispute the availability of other funds, despite retaining investments in the Fund.
21. The Trustee does not have a duty to provide advice to Mr S about his choice of fund. It is Mr S' responsibility to make decisions about his Fund and seek financial advice where appropriate, as notified by the Trustee. There was no obligation for Mr S to have waited until his complaint with this Office had been considered.
22. Therefore, I do not uphold Mr S' complaint.

Karen Johnston

Deputy Pensions Ombudsman
12 March 2018