

Ombudsman's Determination

Applicant	Mr N
Scheme	Friends Life Personal Pension Plans, Plan Numbers 1660518 and 10765682 (the Plans)
Respondent	Aviva, formerly Friends Life (Aviva)

Outcome

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

Complaint summary

2. Mr N's complaint against Aviva is that investments under the Plans were moved into cash funds in 2010 without his knowledge. As a result of this, Mr N says the Plans have not performed as well as they ought to have done.

Background information, including submissions from the parties

3. Mr N had eight policies with Friends Life. Friends Life is now part of Aviva so for the purposes of this Determination, Aviva is the Respondent to the complaint.
4. On 19 October 2010, the Plans were switched from Managed funds to Cash funds. Aviva confirmed this switch to Mr N in writing on 20 October 2010.
5. In September 2017, Mr N said he became aware that the Plans' investments had been switched. Represented by his wife, he complained to Aviva on 28 September 2017. He said after noticing that the Plans were not increasing in value, he had discovered that they were held in cash funds. Mr N said he had not given an instruction for them to be switched.
6. Aviva responded in October 2017. It provided copies of the letters sent to Mr N in October 2010, confirming the fund switches. It said it would not have switched funds unless it received instructions from Mr N, but it did not now have a copy of the instructions it acted on to switch the funds to a cash fund. Aviva provided copies of the annual statements for the Plans which were sent to Mr N since January 2011. These showed the Plans had been invested in the cash fund. Aviva also sent a copy of the quote issued to Mr N in 2013, for all of his plans, which also showed how they

were all invested. Aviva apologised for its “poor record keeping” and sent Mr N a cheque for £100 for the trouble and upset caused.

7. Mr N rejected Aviva’s offer of £100. He said that he did not give an instruction to switch the funds and he said Aviva must offer redress and put the Plans in the financial position they would have been had they remained invested in the Managed fund.
8. Aviva responded on 18 December 2017. It said:-
 - it had checked all its records thoroughly;
 - it could see no reason why it would have moved the Plans to a cash fund unless requested by Mr N, or an authorised agent;
 - there was no correlation between the date Mr N deferred his pension in 2007, and the date the Plans were switched in 2010;
 - markets were particularly volatile in 2010, following stock market crash of 2008, so it was not unusual for customers to switch from risk-based investments to more secure holdings, such as cash;
 - it does not have a copy of any written request, but it is not expected to retain such records from so long ago;
 - if the switch request had been made online, it would also not have a record of this;
 - it has records of calls made to it not long before the switch, so it is “reasonable to assume these might have been switch related”; and
 - if it had known of Mr N’s concerns sooner, it would have been able to conduct a more thorough investigation and could certainly have made any changes earlier if he did not want the Plans to remain in cash funds.
9. Mr N is dissatisfied with Aviva’s response. His position is:-
 - The Plans were switched without his consent or his authority.
 - He has not had any contact with his financial adviser for over 15 years, so it did not give Aviva an instruction to switch the funds of the Plans.
 - Prior to his discovery in September 2017, it had never occurred to him that he needed to be vigilant about a regulated pension provider like Aviva, who ought to have been trusted with his pension.
 - Since 2008, he had been keeping a casual eye on the total value of all eight plans, but it never occurred to him to that he needed to check that they were still invested in the original funds put in place by his financial adviser.

- Although the letters confirming the switches in October 2010 are addressed to him, he does not have the originals in his file.
- Since the inception of the Plans over 25 years ago, he has never dealt directly with Aviva.
- Aviva cannot be absolved from its liability to him just because he did not notice the “unauthorised transaction” on his account earlier.
- It is absurd for Aviva to suggest he could have given instructions online or by telephone. “Any calls ever made have been purely to obtain information not to change holdings.” Telephone instructions would have been recorded and the age of the Plans means there was no online facility.

Adjudicator’s Opinion

10. Mr N’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:-

- For the underlying funds in the Plans to be changed, Aviva would have required an instruction from Mr N, or an agent authorised by him. The issue here is that Aviva does not have a copy of the instructions it acted on to switch the funds. In Mr N’s view, its actions were unauthorised. In the absence of any instructions, the adjudicator considered the events on the balance of probabilities.
- Aviva sent Mr N two letters in October 2010, confirming that the Plans had been switched to a Cash fund. These letters were addressed correctly to Mr N’s current address, so there is nothing to suggest that Aviva did not send them to him.
- On the balance of probabilities, it is more likely than not that Aviva received an instruction in respect of the Plans, acted on the instructions received, then confirmed its actions to Mr N. Aviva has subsequently confirmed that telephone instructions could not be accepted in relation to the Plans. So, as it was more likely than not that Aviva received a written instruction and has since misplaced this, the Adjudicator concluded that Aviva acted on instruction.
- There is evidence that Aviva issued a quote to Mr N in 2013 for all of his Plans. It also sent him yearly statements from January 2011. These provided information about the Plans, including where the funds were invested. Mr N has not disputed receipt of these statements but has said that he did not check the details about the funds. Despite Mr N’s assertion that he only contacted Aviva for information and did not deal with it directly, it was the Adjudicator’s view that these statements provided him with several opportunities to confirm the status of the Plans and review their performance.

- The Adjudicator concluded that, Aviva's inability to find the original instructions is maladministration. Aviva has apologised for its poor record keeping and offered Mr N £100 in respect of the trouble and upset caused. In the view of the Adjudicator, Aviva's apology and compensation was sufficient as the non-financial injustice caused by Aviva losing the instruction is nominal.
11. Mr N did not accept the Adjudicator's Opinion and the complaint was passed to me to consider.
 12. Mr N provided his comments which do not change the outcome. He has argued that:-
 - Based on the balance of probability, an Ombudsman should favour him, as Aviva is unable to provide a copy of the switch request. Aviva can provide all other information from that time except the switch authority so applying the same basis, "Aviva never had this authority".
 - There is no reason to believe what Aviva is saying over what he is saying. His story is "consistent, whereas Aviva has suggested [he] could have given these instructions by telephone or online" and has now changed its position on this.
 - He has had no direct dealings with Aviva regarding any of his plans and a check of its call records will confirm this. So, on the balance of probability, Aviva did not have the authority.
 - He wrote to Aviva on 26 January 2010, to give his authority for his wife to make enquires and carry out administration in respect of his plans. He did not give his authority for her to change his holdings.
 - As Aviva had been sending him fund value quotations showing a summary of the values of his plans, he used these to monitor their performance. As the values for the Plans were increasing, it explains how he could have missed the fund switches.
 13. In response, Aviva said that as the Plans were transferred out on 26 April 2019, data of any kind (beyond the most basic identifiers to prove such a product existed) would no longer be maintained once older than seven years. This includes 2010 documents and telephone calls.
 14. I agree with the Adjudicator's Opinion and I will therefore only respond to the points made by Mr N.

Ombudsman's decision

15. I can appreciate Mr N's frustrations that Aviva has not been able to provide evidence that an investment switch was requested. Mr N's position is that this should lead to a conclusion that Aviva acted without express authority from him. I do not find this to be the case. As neither party has been able to provide evidence on this point, I find it improbable that Aviva would perform an investment switch on the Plans, without an

instruction to do so. Why would Aviva have done that? Had the remaining six plans been switched as well, it could be possible to suggest that something had gone wrong internally which led to such action being taken.

16. Following the fund switches in 2010, Aviva sent Mr N confirmation that they had taken place. this confirmation came in the same year that he wrote to Aviva about his plan, and although Mr N asserts that he does not have copies of the confirmation letters in his records, there is no evidence to indicate that they were not sent to him.
17. Since 2011, Mr N received annual statements that showed he was invested in the cash fund. Mr N has submitted that he had no reason to check his annual statements in detail as the value was increasing. So, he only reviewed the brief one-page summary that accompanied them. Given the importance of pension savings, it is expected that members and policy holders will review information about their benefits so that irregularities, where applicable, can be identified. Aviva provided Mr N with a number of opportunities to notice where the Plans were invested, and that, as a result, he could have raised his concerns with Aviva much earlier.
18. I do not uphold Mr N's complaint.

Anthony Arter

Pensions Ombudsman
16 March 2020