

Ombudsman's Determination

Applicant	Mr H
Scheme	Aviva Self Invested Pension Plan (SIPP)
Respondent	Aviva Life and Pensions UK Limited (Aviva)

Outcome

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

Complaint summary

2. Mr H has complained because he is unhappy to find that he is unable to use the full value of his SIPP to obtain a retirement income.

Background information, including submissions from the parties

3. In April 2008, Mr H applied for the SIPP with AXA. AXA subsequently became part of Friends Life in 2011 and then part of Aviva in 2015.
4. On the application form, he said he wanted to transfer £12,107.15 into the AXA Retirement Distribution Fund, and self-invest £86,572.57 in the Stirling Mortimer Morocco No.6 Fund (**Stirling Mortimer**). MRP Group PLC was listed as Mr H's financial advisers on the application form. The SIPP was established in May 2008 and currently holds investments in Stirling Mortimer and the Aviva Invest Policy AP (**the AP Policy**).
5. Over the years, Aviva sent Mr H illustrations showing the value of his benefits in the SIPP. In August 2018, Aviva sent Mr H an illustration of the benefits he could receive at retirement, if he entered into a drawdown arrangement. The illustration showed that the total value of Mr H's SIPP was £88,091.06, comprised of £19,763 in the AP Policy and £68,327.25 in Sterling Mortimer.
6. After receipt of this illustration, Mr H, through his financial advisor (**the IFA**), contacted Aviva to discuss accessing his benefits in the SIPP. Aviva told the IFA that Mr H could only draw an income from, or transfer the benefits from, the AP Policy.
7. This resulted in Mr H complaining to Aviva, on 24 August 2018. He said:-

- Why was the value of the SIPP shown as £88,000 if that was not the value he was allowed to access?
- Why did £3000 have to remain in the SIPP?
- Why was the maximum amount he could withdraw only £17,000?
- As a layman, he needed accurate, clear and concise information. If he was unable to access his money at that time, he needed to know when he would be able to do so. He would like to know the real value of the SIPP.
- He requested information to enable him to lodge a formal complaint against the advice he had received to invest in Stirling Mortimer.

8. On 12 September 2018, Aviva responded to Mr H and said:

“...the Stirling Mortimer investment fund is not currently redeemable and it’s been like this since 2012. This is down to Stirling Mortimer and is outside of our control. However, this may change in the future.

The last advised value from Stirling Mortimer was £68,327.25 although we have no information relating to this as it’s down to them to confirm.

As the investment cannot currently be redeemed, no money is available from it to pay any retirement benefits. This therefore leaves you with limited options which I understand were discussed with the IFA...”

9. Aviva also provided details of the options that were available to Mr H and said:

“I can only say that it’s your decision on how you wish to proceed and whether it is prudent to use the Stirling Mortimer investment for crystallisation purposes given the nature of the investment. It’s a decision we can’t make and I’m very sorry there’s not much we can do. You may want to discuss all this with your IFA.”

Summary of Mr H’s position

10. Mr H said:-

- He was previously given an award for the wrongful selling of this SIPP from the Financial Services Compensation Scheme (**FSCS**).
- The SIPP was taken over by Aviva a number of years ago and each year he was sent statements showing the value had increased.
- Aviva’s complaint response is full of industry jargon which he struggles to understand, and Aviva seems to completely ignore that it was wrong to send him statements with values that were “completely erroneous.”
- He has now reached an age where he would like to receive an income from the SIPP but he is unable to do so.

- He would like Aviva to explain why he is unable to draw an income from the full value of the SIPP.

Summary of Aviva's position

11. Aviva has provided: a copy of the SIPP's Application form; the SIPP's Terms and Conditions (**T&Cs**); and copies of correspondence between Mr H and Aviva between April 2008 and September 2018. It said it has the deepest sympathy for Mr H's situation but there is very little it can do.

Adjudicator's Opinion

12. Mr H'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 total value of Mr H's SIPP is made up of his investments in the AP Policy and Stirling Mortimer. Stirling Mortimer has been suspended since 2012 and the particular fund in which Mr H is invested went into administration in November 2019.
 - The majority of Mr H's investment is held in Stirling Mortimer, and because this fund is now in administration he is unable to draw an income from it or transfer those funds.
 - The Adjudicator appreciated that the illustrations Aviva had issued to Mr H up to August 2018 led him to believe that he could use the entire value of the SIPP to obtain an income at retirement. However, Aviva could only use the valuations it received from Stirling Mortimer in good faith. The current situation with Stirling Mortimer is outside of Aviva's control.
 - Aviva did not advise Mr H to establish the SIPP, nor did it advise him to invest in Stirling Mortimer. So, while the Adjudicator understood Mr H's frustration with the situation he was in, it was the Adjudicator's view that he was not in this position because of any maladministration by Aviva.
 - Mr H said that he had received some compensation from the FSCS for the advice he received to invest in Stirling Mortimer. This will, presumably, have gone some way to redressing the fact he cannot access that part of his fund. Without knowing the details of the payment he received, given the fact the particular Stirling Mortimer fund in which he is invested is now in administration, it may be worth Mr H approaching FSCS again to see whether he is eligible for any top-up payment.
13. Aviva accepted the Adjudicator's Opinion, but Mr H did not. In response Mr H said:-

- His current IFA has confirmed that the fault rests with the IFA who provided the advice to invest in Stirling Mortimer and the SIPP, when a standard personal pension plan would have served his purpose.
 - Aviva provided the contract but it was the IFA who was responsible for the recommended course of action.
 - Although he understood what his current IFA said, after the SIPP was taken over by Aviva, he was informed over a number of years that the SIPP's value was increasing.
 - He cannot understand how Aviva can be classed as "not responsible" or to have "shown a duty of care" when it became responsible for the SIPP.
 - He questioned how Aviva could provide a yearly valuation of the SIPP, but not be deemed responsible for the money invested.
14. As Mr H did not agree with the Adjudicator's comments, the complaint was passed to me to consider. Mr H's further comments do not change the outcome. I agree with the Adjudicator's Opinion.

Ombudsman's decision

15. I have carefully considered the additional information that Mr H has provided. While I understand his disappointment that Aviva had sent him illustrations over the years that showed the value of the SIPP had increased, Aviva was only providing to Mr H, the information it had received from Stirling Mortimer. As the majority of Mr H's investment was in Stirling Mortimer and Stirling Mortimer is now in administration, Mr H is not able to take a retirement income from that element of the SIPP.
16. The SIPP is currently with Aviva, but Aviva was not responsible for the investments that Mr H held within the SIPP. Aviva was not Mr H's IFA. I find that Aviva did nothing wrong in accepting the values it had received from Stirling Mortimer, and then passing that information on to Mr H, through illustrations.
17. I sympathise with the situation that Mr H is now in, but do not find that he is in this situation because of any maladministration on Aviva's part.
18. I do not uphold Mr H's complaint.

Anthony Arter

Pensions Ombudsman
09 December 2020